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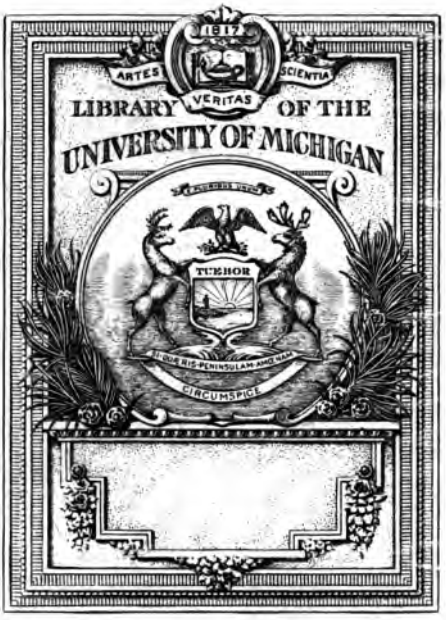
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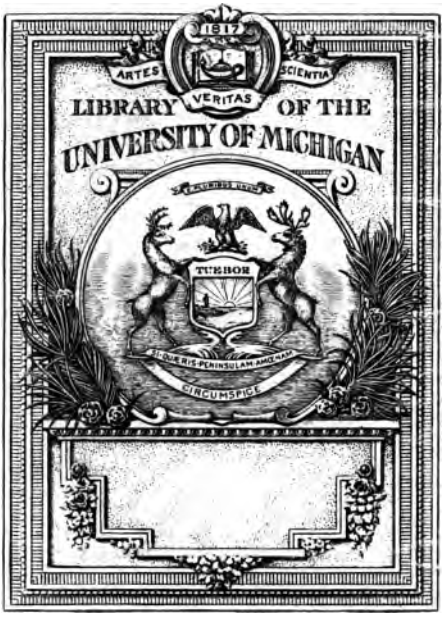
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Thanet, Sackville Tufton, Earl of

THE

# WHOLE PROCEEDINGS

UPON AN

# INFORMATION

EXHIBITED *EX OFFICIO* BY

## THE KING'S ATTORNEY-GENERAL,

AGAINST

*THE RIGHT HON. SACKVILLE EARL OF THANET,*
*ROBERT FERGUSSON, ESQUIRE,*
*AND OTHERS,*

FOR

## A Riot and other Misdemeanours:

*Tried at the Bar of the Court of King's Bench, April 25, 1799.*

Taken in Short-Hand by WM. RAMSEY....The Evidence compared with the Notes of two other Short-Hand Writers.

TO WHICH ARE ADDED,

# *SOME OBSERVATIONS,*

BY

## ROBERT FERGUSSON,

ON HIS OWN CASE,

AND ON THE POINTS OF LAW ARISING UPON THE INFORMATION.

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London,

Printed for

By COOPER and WILSON, Wild-Court, Lincoln's-Inn-Fields.

1799.

under the great ſeal of Great Britain, to inquire, by the oath of good and lawful men of the ſaid county of Kent, of all High Treaſons, and miſpriſions of High Treaſon, other than ſuch as relate to the coin of our ſaid Lord the King, within the county aforeſaid done, committed, or perpetrated; and the ſaid Treaſons, and miſpriſions of Treaſon, according to the laws and cuſtoms of England, for that time to hear and determine; and alſo aſſigned and conſtituted, by the letters patent of our ſaid Lord the King, under the great ſeal of Great Britain, to deliver the gaol of our ſaid Lord the King of the ſaid county of Kent of the priſoners therein being and detained on the nineteenth day of March, in the thirty-eighth year aforeſaid, or who ſhould be therein detained before the tenth day of April in the ſame year, for or on account of any High Treaſons, or miſpriſions of High Treaſon, other than ſuch as relate to the coin of our ſaid Lord the King. At which ſaid ſeſſion ſo then and there holden as aforeſaid before the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, came Arthur O'Connor, Eſquire, in the cuſtody of John Plumptre, Eſquire, Sheriff of the ſaid county of Kent, and which ſaid Arthur O'Connor was, and had been, detained in the gaol of our ſaid Lord the King of the ſaid county of Kent before the tenth day of April in the year aforeſaid, to wit, on the ſeventh day of April in the ſame year, for and on account of High Treaſon, to wit, at Maidſtone aforeſaid: And the ſaid Arthur O'Connor being then and there, to wit, at the ſaid ſeſſion ſo holden as aforeſaid, brought to the bar in his own proper perſon, was then and there committed by the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, to the cuſtody of the ſame Sheriff; and ſo being in the cuſtody of the ſaid Sheriff, was then and there, at the ſame ſeſſion ſo holden as aforeſaid, tried by the jurors of a certain Jury of the county of Kent in that behalf duly impannelled and returned, and choſen, tried and ſworn, for and upon certain High Treaſons not relating to the coin of our ſaid Lord the King, ſpecified and charged upon him in and by a certain indictment theretofore, to wit, at a previous holding of the ſame ſeſſion before the ſaid Sir Francis Buller and John Heath, and others their fellows Juſtices and Commiſſioners aſſigned as aforeſaid, duly found, returned and preſented againſt him by the jurors of a certain other Jury of the ſaid county of Kent duly ſworn and charged to inquire for our ſaid Lord the King for the body of the ſame county, and to which ſaid indictment he had theretofore pleaded that he was not guilty of the premiſes therein ſpecified and charged upon him: And the ſaid Arthur O'Connor then being in the cuſtody of the ſaid Sheriff as aforeſaid, was then and there, at the ſame ſeſſion, by the jurors by whom he was ſo tried as aforeſaid, found not guilty of the premiſes in and by the ſaid indictment

ſpecified

ſpecified and charged upon him, as by the record and proceedings thereof more fully appears.—And the ſaid Attorney General for our ſaid Lord the King further giveth the Court here to underſtand and be informed, that *the right honourable Sackville Earl of Thanet*, late of Maidſtone, in the county of Kent, *Robert Ferguſſon*, late of the ſame place, Barriſter at Law, *Thomas Gunter Browne*, late of the ſame place, Eſquire, *Dennis O'Brien*, late of the ſame place, Eſquire, and *Thomas Thompſon*, late of the ſame place, Eſquire, well knowing the premiſes aforeſaid, but unlawfully and malicioufly deviſing and intending to impede the courſe of public juſtice, and to break the peace of our ſaid Lord the King, and to interrupt and diſturb the Juſtices and Commiſſioners of our ſaid Lord the King above named, and others their fellows aforeſaid, in the execution of their ſaid office, and to prevent and hinder the due and peaceable holding of the ſame ſeſſion, did, together with divers other riotous and ill-diſpoſed perſons, whoſe names are to the ſaid Attorney General as yet unknown, in open Court, at the ſame ſeſſion ſo then and there holden, and at which the ſaid trial was ſo had as aforeſaid, to wit, at Maidſtone aforeſaid, in the preſence of the Juſtices and Commiſſioners of our ſaid Lord the King above named, and others their fellows aforeſaid, and before any order or direction had been made or given by the ſame Juſtices and Commiſſioners above named, and others their fellows aforeſaid, or any or either of them, for the diſcharge of the ſaid Arthur O'Connor from the cuſtody of the ſaid Sheriff, and before the ſaid Arthur O'Connor was diſcharged from the cuſtody of the ſaid Sheriff, to wit, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, at Maidſtone aforeſaid, in the county of Kent, with force and arms make and cauſe to be made a very great riot, rout, tumult and diſturbance, and with force and arms riotouſly, routouſly and tumultuouſly attempt and endeavour to reſcue the ſaid Arthur O'Connor from and out of the cuſtody of the ſaid Sheriff, ſo that he the ſaid Arthur O'Connor might go at large whitherſoever he would, and alſo aid and aſſiſt the ſaid Arthur O'Connor in an attempt by him then and there made to reſcue himſelf, and eſcape and go at large from and out of the cuſtody of the ſaid Sheriff; and the better to effect ſuch reſcue and eſcape, did then and there, at the ſame ſeſſion ſo holden, and at which the ſaid trial was ſo had as aforeſaid, to wit, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, at Maidſtone aforeſaid, in the open Court aforeſaid, and in the preſence aforeſaid, with force and arms, and with ſticks, ſtaves and fiſts, unlawfully, riotouſly, routouſly and tumultuouſly make an aſſault in and upon one John Rivett, one Edward Fugion, and one Thomas Adams, in the peace of God, and of our ſaid Lord the King then and there being, and them the ſaid John Rivett, Edward Fugion, and Thomas Adams, did

did then and there beat, bruiſe, wound, and ill-treat, and thereby then and there, with force and arms, did unlawfully, riotouſly, routouſly and tumultuouſly impede and obſtruct the Juſtices and Commiſſioners of our Lord the King above named, and others their fellows aforeſaid, in the due and lawful holding of the ſame ſeſſion, and the execution of their office, for a long ſpace of time, to wit, the ſpace of one hour, to the damage of the ſaid John Rivett, Edward Fugion, and Thomas Adams; to the great contempt, diſturbance, and interruption of the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, to the great terror of all the liege and peaceable ſubjects of our ſaid Lord the King there being, in contempt of our ſaid Lord the King and his laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity.

And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, further giveth the Court here to underſtand and be informed, that the ſaid Sackville Earl of Thanet, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, well knowing all the premiſes aforeſaid, but unlawfully and maliciouſly deviſing and intending to impede the courſe of public juſtice, and to reſcue and cauſe to be reſcued the ſaid Arthur O'Connor, ſo being in the cuſtody of the ſaid Sheriff as aforeſaid, from the cuſtody of the ſaid Sheriff, ſo that he the ſaid Arthur O'Connor might go at large whitherſoever he would, did afterwards, to wit, at the ſame ſeſſion ſo then and there holden, and at which the ſaid trial was ſo had as aforeſaid, and before any order or direction had been made or given by the Juſtices and Commiſſioners of our ſaid Lord the King above named, and others their fellows aforeſaid, or any or either of them, for the diſcharge of the ſaid Arthur O'Connor from the cuſtody of the ſaid Sheriff, and alſo before the ſaid Arthur O'Connor was diſcharged from the cuſtody of the ſaid Sheriff, to wit, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, at Maidſtone, in the county of Kent, with force and arms, aid and aſſiſt the ſaid Arthur O'Connor in a certain other attempt by him then and there made to reſcue himſelf, and eſcape and go at large from and out of the cuſtody of the ſaid Sheriff; and the better to effect ſuch reſcue and eſcape as laſt aforeſaid, did then and there, with force and arms, and with ſticks, ſtaves, and fiſts, unlawfully make a certain other aſſault in and upon the ſaid Thomas Adams, in the peace of God, and of our ſaid Lord the King then and there being, and in the aid of the ſaid Sheriff then and there alſo being, and him the ſaid Thomas Adams did then and there again beat, bruiſe, wound, and ill-treat, to the great damage of the ſaid Thomas Adams, to the great contempt, diſturbance and interruption of the Juſtices and Commiſſioners

above

above named, and others their fellows aforeſaid, in contempt of our ſaid Lord the King and his Laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity.

And the ſaid Attorney General for our ſaid Lord the King further giveth the Court here to underſtand and be informed, that at the ſaid ſeſſion ſo holden, and at which the ſaid trial was ſo had as aforeſaid, to wit, at Maidſtone aforeſaid, in the county aforeſaid, the ſaid Sackville Earl of Thanet, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, unlawfully and maliciouſly deviſing and intending to break the peace of our ſaid Lord the King, and to interrupt and diſturb the Juſtices and Commiſſioners of our ſaid Lord the King above named, and others their fellows aforeſaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the ſaid ſeſſion, did, together with divers other ill-diſpoſed perſons, whoſe names are to the ſaid Attorney General as yet unknown, at Maidſtone aforeſaid, in the open Court aforeſaid, and in the preſence of the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, to wit, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, unlawfully, riotouſly, routouſly, and tumultuouſly aſſemble and gather themſelves together to break the peace of our ſaid Lord the King, and to interrupt, diſturb, and obſtruct the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the ſaid ſeſſion; and being ſo aſſembled and gathered together, did then and there, with force and arms, at the ſaid ſeſſion ſo then and there holden, and at which the ſaid trial was ſo had as aforeſaid, in the open Court aforeſaid, and in the preſence aforeſaid, with force and arms, unlawfully, riotouſly, routouſly, and tumultuouſly make and raiſe, and cauſe and procure to be made and raiſed another very great noiſe, tumult, riot, and diſturbance, and thereby for a long ſpace of time, to wit, for the ſpace of half an hour, interrupt, diſturb, and obſtruct the Juſtices and Commiſſioners above named, and others their fellows aforeſaid, in the lawful and peaceable holding of the ſaid ſeſſion, and in and upon the ſaid John Rivett, Edward Fugion, and Thomas Adams, in the peace of God, and of our ſaid Lord the King then and there being, with force and arms, did then and there make another aſſault, and then the ſaid John Rivett, Edward Fugion, and Thomas Adams, did again beat, bruiſe, wound, and greatly ill-treat, to the great damage of the ſaid John Rivett, Edward Fugion, and Thomas Adams, to the great hindrance of public juſtice, to the manifeſt diſturbance and violation of the peace of our ſaid Lord the King, to the great hindrance, obſtruction, and contempt of the Juſtices and Commiſſioners

Commiſſioners above named, and others their fellows aforeſaid, to the great terror of all the liege and peaceable ſubjects of our ſaid Lord the King there being, in contempt of our ſaid Lord the King and his Laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity.

And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, further giveth the Court here to underſtand and be informed, that at a certain other ſpecial ſeſſion of oyer and terminer and goal delivery, holden by adjournment in and for the county of Kent, at Maidſtone in the ſaid county, on Monday the twenty-firſt day of May, in the thirty-eighth year aforeſaid, before Sir Francis Buller, Baronet, one of the Juſtices of our ſaid Lord the King of his Court of Common Pleas, John Heath, Eſquire, one other of the Juſtices of our ſaid Lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Juſtices of our ſaid Lord the King aſſigned to hold pleas before the King himſelf, Samuel Shepherd, Eſquire, one of the Serjeants of our ſaid Lord the King learned in the law, and others their fellows Juſtices and Commiſſioners of our ſaid Lord the King, by our ſaid Lord the King duly aſſigned and conſtituted to hold the ſame ſeſſion, the ſaid Sackville Earl of Thanet, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, unlawfully and maliciouſly deviſing and intending to break the peace of our ſaid Lord the King, and to prevent and hinder the due and peaceable holding of the ſaid laſt-mentioned ſeſſion, did, together with divers other ill-diſpoſed perſons, whoſe names are to the ſaid Attorney General as yet unknown, in open Court, at and during the continuance of the ſaid laſt-mentioned ſeſſion, and in the preſence of the Juſtices and Commiſſioners laſt above named, and others their fellows aforeſaid, to wit, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, at Maidſtone aforeſaid, in the ſaid county of Kent, unlawfully, riotouſly, routouſly, and tumultuouſly, aſſemble and gather themſelves together to break the peace of our ſaid Lord the King, and to prevent and hinder the due and peaceable holding of the ſaid laſt-mentioned ſeſſion; and being ſo aſſembled and gathered together, did, then and there, with force and arms, at the ſaid laſt-mentioned ſeſſion, in the open Court laſt aforeſaid, and in the preſence laſt aforeſaid, unlawfully, riotouſly, routouſly, and tumultuouſly make and raiſe, and cauſe and procure to be made and raiſed, another very great noiſe, rout, tumult, riot, and diſturbance, and thereby for a long ſpace of time, to wit, the ſpace of half an hour, interrupt, diſturb, and obſtruct the Juſtices and Commiſſioners laſt above named, and others their fellows laſt aforeſaid, in the lawful and peaceable holding of the ſaid laſt-mentioned ſeſſion,

to

to the great hindrance of public juſtice, to the contempt and interruption of the Juſtices and Commiſſioners laſt above named, and others their fellows aforeſaid, to the manifeſt diſturbance and violation of the peace of our ſaid Lord the King, to the great terror of all the liege and peaceable ſubjects of our ſaid Lord the King there being, in contempt of our ſaid Lord the King and his laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity.

And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, further giveth the Court here to underſtand and be informed, that the ſaid Sackville Earl of Thanet, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, unlawfully and maliciouſly deviſing and intending to break the peace of our ſaid Lord the King, did, together with divers other ill-diſpoſed perſons, whoſe names are to the ſaid Attorney General as yet unknown, on the twenty-firſt day of May, in the thirty-eighth year aforeſaid, at Maidſtone aforeſaid, in the county of Kent, unlawfully, riotouſly, routouſly, and tumultuouſly aſſemble and gather themſelves together to break the peace of our ſaid Lord the King; and being ſo aſſembled and gathered together, did then and there, with force and arms, unlawfully, riotouſly, routouſly, and tumultuouſly make and raiſe, and cauſe and procure to be made and raiſed, another very great noiſe, rout, tumult, riot, and diſturbance, to the manifeſt diſturbance and violation of the peace of our ſaid Lord the King, to the great terror of all the liege and peaceable ſubjects of our ſaid Lord the King there inhabiting and being, in contempt of our ſaid Lord the King and his laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity.

Whereupon the ſaid Attorney General of our ſaid Lord the King, who for our ſaid Lord the King in this behalf proſecuteth for our ſaid Lord the King, prayeth the conſideration of the Court here in the premiſes, and that due proceſs of law may be awarded againſt them the ſaid Sackville Earl of Thanet, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, in this behalf, to make them anſwer to our ſaid Lord the King touching and concerning the premiſes aforeſaid.

Wherefore the Sheriff of the ſaid county of Kent was commanded that he ſhould not forbear, by reaſon of any liberty in his bailiwick, but that he ſhould cauſe them to come to anſwer to our ſaid Lord the King touching and concerning the premiſes aforeſaid.

And now, that is to ſay, on Wedneſday next after the octave of Saint Hilary in this ſame term, before our ſaid Lord the King at Weſtminſter, come the ſaid Sackville Earl of Tha-

net, Robert Ferguſſon, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompſon, by Benjamin Burnett, their Clerk in Court; and having heard the ſaid Information read, they ſeverally ſay that they are not guilty thereof, and hereupon they ſeverally put themſelves upon the country; and the ſaid Sir John Scott, who for our ſaid Lord the King in this behalf proſecuteth, doth the like therefore.

MR. ATTORNEY GENERAL.

May it pleaſe your Lordſhips, and Gentlemen of the Jury—I can very unfeignedly aſſure you, that I ſhould have felt infinite ſatisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have inſtituted the preſent proſecution.

Gentlemen, many reaſons would have influenced me to act upon that wiſh. The firſt and the moſt important is, that I am obliged, by this Information, to impute to a Nobleman who is one of the defendants, and to the Gentlemen whoſe names occur upon this record as the other defendants, an offence which appears to me to be one of the moſt heinous, the conſideration of which has been offered, in the hiſtory of our law, to the deciſion of a Jury.

Gentlemen, in ſo viewing the ſubject, I hope I may be allowed, though I am the proſecutor of this Nobleman and theſe Gentlemen, to expreſs my regret that I am to make ſuch an imputation in a Court of Juſtice with reſpect to any of them: but, Gentlemen, when I conſider that the pure adminiſtration of law in this country is the great ſecurity upon which all the public bleſſings known to the country reſt; when I recollect that it is abſolutely neceſſary for the free and uncontroled adminiſtration of that juſtice, that thoſe who have duties relative to any part of it ſhould act under the impreſſion that they are perfectly ſecure in the adminiſtration of the juſtice of the country, it is quite impoſſible for me to act upon any other principle but this, namely, that it muſt be known that the Attorney-General of the country is bound, where there is a probable cauſe to impute to individuals that they have groſsly violated that principle which requires that the adminiſtration of juſtice ſhould be ſafe, to put upon them at leaſt the neceſſity of ſatisfying a Jury of the country that they are innocent of that charge.

Gentlemen, I agree that the charge is not to be made upon light grounds; that circumſtances ought to be laid before the Officer of the Crown, which may juſtify him in the exerciſe of a fair and honourable diſcretion to bring forward the accuſation; and I ſhall go along with my learned friends in admitting, that the circumſtance of the accuſation being made, by no means decides that it is juſtly made: It is for you carefully and anxiouſly to

to examine the circumſtances of the evidence, and then to decide whether the firſt appearances of guilt have been alſo attended with actual guilt.

Gentlemen, the Information ſtates to you, that at a Special Seſſion of Oyer and Terminer held at Maidſtone in the month of May laſt, Mr. O'Connor, together with ſeveral other perſons, were tried for the crime of High Treaſon, of which they had been accuſed by a Grand Jury of the county of Kent. The Information ſtates, that the Jury had found four of the Defendants, Mr. O'Connor being one of the four, not guilty of the offence with which they were charged. The Information ſtates, that before he was diſcharged, theſe Defendants (and you will give me leave to point out particularly to you the ſubſtance of the different charges in this Information) did, in open Court, and before any diſcharge, make a riot, and attempt to reſcue him out of the cuſtody of the Sheriff; that they aſſaulted three perſons named in the firſt count of the Information, John Rivett, Edward Fugion, and Thomas Adams; that they riotouſly impeded and obſtructed the Commiſſioners of His Majeſty in the due and lawful holding of the Seſſion: The ſecond count charges them with having, before the diſcharge of Mr. O'Connor, aſſiſted him to reſcue himſelf out of the cuſtody of the Sheriff, and having aſſaulted Thomas Adams, who was acting in aid of the Sheriff: The third count charges them with having made a riot in open Court, and been guilty of the aſſault: The fourth count charges them with a riot in open Court, without the circumſtance of the aſſault; and the laſt count charges them with a riot, without any addition of circumſtances: And it will be for you to determine whether they are guilty of all or any of the charges ſtated in this Information.

Gentlemen, I will endeavour now to open to you as much of this caſe as may enable you to underſtand as much of this evidence as is offered to you; not entering into the minutiæ of the evidence, but endeavouring to aſſiſt you in the information you will preſently receive from the witneſſes, by ſtating ſo much of the caſe as may make it intelligible to you, without preſuming to ſtate more to you; becauſe, perhaps, in all caſes where juſtice is to be adminiſtered, more particularly in criminal caſes, it would be my wiſh that the Jury ſhould learn it from thoſe who are to ſtate it upon their oaths, rather than receive any impreſſion from the perſon ſtanding in the ſituation in which I have the honour to addreſs you.

Gentlemen, the trial at Maidſtone was, as I need not tell thoſe to whom I have the honour to addreſs myſelf, an extremely long one. The witneſſes on both ſides had been deſired to withdraw from the Court previous to the commencement of the trial. In the natural courſe of proceeding, the witneſſes for the defendants were called after the witneſſes for the proſecution; and

the Noblemen and Gentlemen who gave evidence in favour of Mr. O'Connor and the other defendants in that trial for High Treaſon, after reſpectively giving their evidence, remained in Court. It may be neceſſary for me here to ſtate to you ſo much of the conſtruction of the Court as will enable you to underſtand what I am now repreſenting to you; you will have plans of the Court offered to you by and by, in order to make the evidence more intelligible. Give me leave to repreſent His Majeſty's Commiſſioners to ſit in the place where the learned Judges now ſit; you will conſider the Jury as ſitting very nearly in the poſition, with reſpect to the Judges, as you now ſit with relation to the Judges who now ſit here. The Counſel for the proſecution ſat, I think, in that part of the Court where that Gentleman is now ſitting with a yellow waiſtcoat; and above them was a place in which the ſeveral witneſſes were examined. The witneſſes were therefore directly oppoſite the Jury, and the priſoners at the bar were removed ſomewhat behind the Counſel, who ſat, as it were, in the place where I am now ſtanding, there being ſome little diſtance between them and the priſoners, who were in the bar behind.

Gentlemen, after the ſeveral witneſſes had been examined for the priſoners, moſt of them, I believe, remained in Court; and I ſhould not make the obſervation, if it did not appear to me material with reference to the preſent caſe. Indeed, I ſhould not be juſtified in making the obſervation, if I did not find it to be material to the preſent caſe; for the circumſtance of the witneſſes having been removed out of Court before the trial began was extremely favourable, I do not mean to ſay otherwiſe than juſtly ſo, to the priſoners, becauſe, after the caſe had been proved, ſuch as it was, on the part of the proſecution, one feels it a little difficult to believe, that if that evidence had been heard, by the witneſſes for the defendants, which had been given by the witneſſes for the proſecution, the evidence that was given for the defendants could have been given; and this is material in this point of view, becauſe with reſpect to the Noble Lord who is one of the defendants upon this record, and with reſpect to ſome other defendants upon this record, although they had not heard the evidence in the courſe in which it was offered to the attention of the Jury, yet, before the circumſtances happened which are charged in this Information as circumſtances of criminal guilt, no one of the defendants, as far as I know, I mean, could have been ignorant of the circumſtances actually proved with reſpect to Mr. O'Connor, as that evidence applied to his relation to England or his relation to Ireland; and I will ſtate preſently the uſe I mean to make of that circumſtance. Gentlemen, in the courſe of the afternoon which preceded the concluſion of the trial, I have reaſon to believe that Lord Thanet, and the other perſons upon this record, very ſtudiouſly and anxiouſly placed themſelves

in that part of the Court in which they could act with effect with reſpect to the reſcue of Mr. O'Connor. Gentlemen, with reſpect to one of the defendants, whom, as a gentleman in the profeſſion to which I belong, I certainly proſecute with all the regret that can belong to that circumſtance, but which, at the ſame time, muſt not ſuperſede the obligations I owe to the Public—that gentleman had been in Court during the whole of the trial: he had been Counſel for ſome or one of the priſoners; and he was placed, in conſequence of the duty he had to diſcharge, in a ſituation in which, if he choſe ſo to exert himſelf, he certainly could be uſeful in this attempt to reſcue Mr. O'Connor. With reſpect to the Noble Lord, I need not, I am ſure, in this place, ſtate to you, that he holds in this country the character of an hereditary member of the Conſtitution; and with reſpect to the laſt gentleman whom I mentioned, Mr. Ferguſſon, I take leave to ſay, beſides the general duty he owed to the Public in a matter of this nature, there was another very high duty impoſed upon him, which I hope and truſt Gentlemen who ſit behind me will never forget—that that Gentleman, as a barriſter, owed a duty to the Court—that it is their bounden duty, that it is a very ſacred duty of their's, inſtead of interrupting the courſe of juſtice, to aſſiſt it in every fair, honorable and effectual way.

Gentlemen, a verdict of Not Guilty was given in the caſe of Mr. O'Connor; and here I am very ready to admit this, that if I could have perſuaded myſelf that the circumſtances which then took place, namely, that Mr. O'Connor, in conſequence of that verdict, miſconceiving that he was diſcharged, and acting under that impulſe, had intended merely to mix himſelf with the reſt of the Court, and that thoſe who had been charged with the care of his intereſts, or thoſe who thought well of him, had acted upon the impulſe of the feelings of that moment, which might certainly have been ſuch as to have miſled men who, upon better conſideration, would not have ſo acted, it would have become me to have heſitated before I determined, conſiſtently with an attention to the public ſafety and to the public intereſts, to have inſtituted this proſecution.

Now, Gentlemen, before I proceed to ſtate to you the circumſtances to which I beg your ſerious attention, I will ſtate to you the motives with which I do it. When I ſtate the circumſtance of a warrant having been iſſued to apprehend Mr. O'Connor, conceiving, as I do, that ſome perſons either knew, or believed or conjectured, that there might be ſome other demand of juſtice upon O'Connor, and that therefore they were determined he ſhould not remain in Court till he was regularly diſcharged, for the purpoſe of preventing that other demand of juſtice being made upon him—I ſay the offence, even in that way, is of ſo aggravated a nature,

ture, that I have no wiſh to charge it higher upon the record.

Then, Gentlemen, I have to ſtate this to you—When the verdict of Not Guilty was pronounced, Mr. O'Connor endeavoured (it will be for you to decide whether or not with the co-operation of the defendants whoſe names occur upon this record) to get out from the place in which he ſtood as a priſoner, with a view to get out of Court, and for the purpoſe of not being anſwerable to ſome demands of juſtice which he, and thoſe who were acting with him, had reaſon to believe would be made upon him, if he ſtaid till he was regularly diſcharged.

Gentlemen, one of the defendants in this caſe, I mean Mr. Thompſon, a member of Parliament, was bound, certainly, from his ſituation as a ſubject of this country, and bound from the high ſituation in which he ſtands in the country, not to be acting in the execution of ſuch a purpoſe as this Information imports: but you will find that he, together with Mr. O'Brien, had taken great pains, in the courſe of the afternoon, to ſift from certain perſons who will be called to you as witneſſes, one of whom, indeed, I cannot call, becauſe the hand of GOD has removed him by death, but who would have ſpoke of important circumſtances—I mean Fugion the officer; but I think you will find very ſatisfactory evidence independent of that; and I ſhould not have mentioned his name, but his name will be introduced in a very ſtriking manner by the witneſſes; you will find that Mr. O'Brien and Mr. Thompſon were, in the courſe of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of juſtice upon Mr. O'Connor, ſuppoſing him to be acquitted of the preſent charge.

Gentlemen, you will hear and you will attend to the evidence that will be given upon that part of the caſe; and when the conduct of Mr. Thompſon is ſtated to you by the perſons who will relate how he acted at the moment when Mr. O'Connor firſt attempted to eſcape out of this Court, you will then conſider with yourſelves, whether the caſe is not, by that evidence, moſt completely made out againſt Mr. Thompſon. I diſtinguiſh him in this part of the caſe, becauſe, according to the evidence which I have now to offer to you, I have no teſtimony to give with reſpect to Mr. Thompſon, as to his conduct in what I call the ſecond riot which happened; and I think it right to ſay ſo, that the caſe may be diſembarraſſed in the firſt inſtance, and, in the ſecond, that I may do him juſtice.

Gentlemen, you will hear what part Mr. Ferguſſon took in this: and here I cannot but obſerve, that it is quite impoſſible that I can do Mr. Ferguſſon the diſcredit to ſuppoſe, that he could believe, after the evidence he had heard, that it was

ſo

ſo unfit that juſtice ſhould make any other demand upon Mr. O'Connor—that it was fit that he ſhould forcibly reſiſt the execution of that demand if it was made. I muſt give him credit for his profeſſional knowledge; I muſt give him credit for the accurate knowledge which he muſt have had upon the occaſion.

But, Gentlemen, it does not reſt there; for the officer being charged to arreſt Mr. O'Connor, the fact was made known to the Court; and the learned Judge who preſided there, I mean Mr. Juſtice Buller, whoſe abſence I cannot but lament, when I recollect that that abſence is occaſioned by extreme illneſs—Mr. Juſtice Buller expreſsly ſtated, that the priſoners were not to be diſcharged; and expreſsly directed, that all the priſoners, except that one upon whom ſentence of death was to be paſſed, ſhould be kept back for the preſent. This was, therefore, a diſtinct notice, that there was an act to be done upon the part of the Court.

Now, Gentlemen, be ſo good, without my entering into a detail of that evidence, to attend to the circumſtances as to the conduct of the different defendants, during the time the learned Judge was executing the painful duty of paſſing the ſentence of death—giving your attention alſo to what was the conduct of the ſeveral defendants, when this notice had been publicly given in Court, the moment that that ſentence was finiſhed; and unleſs I am deceived, indeed, with reſpect to the effect of that evidence, you will have no difficulty in coming to this concluſion, that thoſe defendants did mean to take Mr. O'Connor out of the reach of the demands which it had been publicly declared juſtice had upon him.

Gentlemen, I do not know how the defendants are to deliver themſelves from this charge; becauſe I will give any caſe to my learned Friend that he chooſes to aſk of me; I will ſuppoſe that he was abſolutely diſcharged; I will admit, that, under a miſconception that there was no other demand of juſtice upon him, they ſuppoſed he ought to be liberated immediately under the circumſtances in which he ſtood, and that that was a miſtake, a miſapprehenſion; but, Gentlemen, what is to become of the juſtice of the country, if ſuch an example is to be ſet, that a Peer of this realm, and a learned Gentleman in my own profeſſion, together with theſe other Gentlemen named in this record, ſhall take the juſtice of the country into their own hands?—that you ſhall hear, in a Court of Juſtice, men ſaying to a priſoner, "Spring!" Another, "Put out the lights!"—In fact, the lights were put out, and a great deal of confuſion enſued, which, if it had not been met with a great deal of ſpirit by the witneſſes who will be called to you, no man could be anſwerable for what might have been the ſerious conſequences attending it: and the duty impoſed upon me is this—to take care of you—to take care of the learned Judges—to take care of all who

who have either acted in the adminiſtration of juſtice, or who are preſent with thoſe who are acting in the adminiſtration of juſtice; and I ſhould have been deeply reſponſible if I had not inſtituted this proſecution, whatever may be your verdict upon the circumſtances of the caſe, as a public leſſon to all mankind that the Courts of Juſtice muſt be treated with reſpect.

Gentlemen, I preſume we ſhall have evidence given, and it is very fit that it ſhould be given, whether theſe acts were done intentionally, or under a miſconception. It may admit of an explanation of that ſort—with reference to which, I beg leave to call your attention to circumſtances very material for that attention, when you are determining upon the character of the acts done by the defendants, and the view with which they did thoſe acts. It will be, for inſtance, for Mr. Ferguſſon to explain what could put into the hands of a profeſſional man a ſtick, with which he attempted to ſtrike at thoſe who were executing their duty; it will be for him to explain what was the meaning of the expreſſions which he uſed: And with reſpect to the Noble Lord Thanet, I ſhall prove to you, that when advice was given to him, that it would be better for him, in the high and great ſituation which he held, to recommend a peaceable demeanour, to endeavour that the quiet of the Court ſhould be kept, that that Noble Lord expreſſed himſelf to this effect, "It is but fair that he ſhould have a run for it;" and when you couple that expreſſion as it will be proved by reſpectable witneſſes, with his acts as they will be proved by reſpectable witneſſes, I think you can have no doubt what was the character of the acts, and what the intention of that Noble Lord.

Gentlemen, having thus ſtated the circumſtances, I ſhall proceed to call the witneſſes. I am perfectly ſure that you will give that attention which is due to the public and to the defendants. It is not for the intereſts of juſtice, unqueſtionably, that any man ſhould be convicted who ought not to be convicted; you will hear, therefore, the evidence with as favourable an eye to the ſeveral defendants as the nature and intereſts of juſtice will permit: but, on the other hand, I am ſure you will remember, that no ſtation or rank in life ought to protect any man from the operation of law; and in truth, in a moral view, the higher the ſituation of men who are guilty of offences of this nature, the higher the offence is, the more that offence calls for puniſhment.

## *EVIDENCE FOR THE CROWN.*

*John Stafford ſworn.*

*Mr. Law*—My Lord, I only call this witneſs at preſent, for the purpoſe of producing a copy of the record: I ſhall afterwards examine him more at large.

*Q.* You are clerk to Mr. Knapp, clerk of aſſize on the home circuit?

*A.* I am.

(Produces a copy of the record of the conviction of O'Coigly, and of the acquittal of O'Connor and others.)

*Q.* Have you examined it?

*A.* I have.

(It was read by Mr. Barlow.)

*Mr. Garrow*—We propoſed to have troubled Mr. Juſtice Heath; but as he is not yet come down, we will now call Mr. Serjeant Shepherd.

*Mr. Serjeant Shepherd ſworn, examined by Mr. Garrow.*

*Q.* We have collected from the record, that you were one of the Commiſſioners appointed to try certain perſons at Maidſtone?

*A.* I was.

*Q.* Did you attend upon the Bench upon that occaſion?

*A.* I did.

*Q.* Do you remember the circumſtance of the Jury, after they had retired, coming into Court to deliver their verdict?

*A.* I do.

*Q.* Are you acquainted with the perſon of my Lord Thanet?

*A.* I am: I had ſeen my Lord Thanet examined as a witneſs on that day for Mr. O'Connor; I did not know his perſon before.

*Q.* Are you acquainted with the perſon of Mr. Dennis O'Brien?

*A.* I am.

*Q.* Are you acquainted with the perſon of Mr. Gunter Browne?

*A.* I cannot ſay I am: I knew Mr. Gunter Browne a great many years ago: I had no recollection of its being Mr. Gunter Browne—but I ſaw a perſon upon the table, after the riot was over, who was ſaid to be Mr. Gunter Browne.

*Q.* Are you acquainted with Mr. Ferguſſon, a gentleman at the bar?

*A.* I am.

*Q.* Are

*Q.* Are you acquainted with Mr. Thompſon?

*A.* I am acquainted with the perſon of Mr. Thompſon; but I do not recollect ſeeing Mr. Thompſon at Maidſtone.

*Q.* Be ſo good as ſtate to the Court, whether, after the Jury had given in their verdict, and judgment of death had been pronounced upon the priſoner who was convicted, you made any obſervation upon any of theſe perſons, or their conduct?

*A.* After the Jury had given their verdict, and indeed, I think, at the time the Jury gave their verdict, my Lord Thanet was ſtanding before the bar at which the priſoners ſtood, with his back to the priſoners, and his face of courſe towards the Court. I am not quite ſure whether my Lord Thanet was on the bench at which the ſolicitors for the priſoners ſtood, or whether there was any ſpace between the bench and the bar; that I could not ſufficiently obſerve.

*Mr. Garrow*—It may not be improper here to ſtate (and we ſhall certainly prove it), that there was no ſuch ſpace—I believe every body knows that the bench to which the learned Serjeant alludes, was made for the accommodation of the ſolicitors, and was as this may be, ſuppoſing this to be the bar, (*deſcribing it.*)

*Mr. Serjeant Shepherd*—My Lord Thanet ſtood with his face towards the Court, and his back to the priſoners: he was rather to the right hand of O'Connor; I don't mean upon a line with O'Connor, of courſe, but rather to his right hand.

*Q.* May I interrupt you to aſk, whether the right-hand ſide was the ſide upon which the jailor was placed?

*A.* I am not quite ſure whether it was the ſide on which the jailor was placed: it was the ſide on which O'Coigly, the convicted priſoner, ſtood; and it was the ſide on which the Bow-ſtreet officers afterwards endeavoured to advance.

*Mr. Erſkine*—The ſide neareſt to the great ſtreet of Maidſtone?

*Mr. Garrow*—Certainly ſo, which is the ſide on which we all know the jailor is placed.

*Q.* You recollect the jailor has a box on that ſide next the great ſtreet?

*A.* I recollect he has, and therefore it was certainly on that ſide on which the jailor was placed. Mr. O'Brien ſtood, or ſat, at that time, I don't exactly recollect which—but Mr. O'Brien was on the ſame line with Lord Thanet, but rather to the left hand of Mr. O'Connor. Whether there was any perſon between my Lord Thanet and Mr. O'Brien, I do not recollect.

*Q.* When I interrupted you, you was about to ſtate ſomething of the Bow-ſtreet officers advancing?

*A.* I think ſomething had been ſaid before the Jury brought in their verdict. When there was an expectation that they were

were coming, ſomething had been ſaid about the Bow-ſtreet officers being there. There was a ſort of noiſe or buzz in Court; and ſomebody ſaid, I don't know who, that the Bow-ſtreet officers were making a noiſe. In conſequence of that it was that I obſerved one of the officers, I think Rivett—it was either Fugion or Rivett; I am not quite ſure that I recollect the perſon of one from the other ———

*Q.* You had ſeen them and heard them give evidence?

*A.* I had, and I rather think it was Rivett, who I obſerved ſtanding at the corner of the bar; and they were deſired to be quiet—not particularly the Bow-ſtreet officers, but the Court deſired that every body would be quiet; and they were quiet; and the Jury then brought in their verdict. When the Jury pronounced their verdict of Not Guilty upon Mr. O'Connor, ſome perſon, but whom I don't recollect, ſaid, "Then they are diſcharged;" other perſons ſitting round the table ſaid, "No, they are not diſcharged;" and at that time Mr. O'Connor, I think, had raiſed his knee to the bar, as if to get over; whether he was puſhed back, or pulled back, I don't know; but he was reſtored to his former poſition behind the bar. A queſtion was put to the Court, by ſomebody—whether by the priſoners, or the counſel for the priſoners, or by-ſtanders, I cannot tell—but ſome one ſaid, "Are they not diſcharged, my Lord?" or, "Have they not a right to be diſcharged?" or ſome ſuch terms. Mr. Juſtice Buller, I think, ſaid, "No, they are not to be diſcharged yet; put the other priſoners back, and let O'Coigly ſtand forward:" I don't pledge myſelf for the exact words, but certainly to that effect.

*Q.* I will trouble you to repeat that, according to the beſt of your recollection?

*A.* "Put the other priſoners back, and let O'Coigly (who was the convicted priſoner) ſtand forward." I ſhould have told your Lordſhip, that when it was aſked, "whether they were not to be diſcharged," before the riot, if I may ſo ſpeak, began, one of the Bow-ſtreet officers, I think, got up upon the bench, or form I ſhould rather ſay, and ſaid, "No, my Lord, I have a warrant againſt Mr. O'Connor;" whether he added for Treaſon, or for High Treaſon, I do not recollect. It was immediately upon the officer's ſaying that, that Mr. Juſtice Buller ſaid, "They are not diſcharged:" I don't mean, in anſwer to that; but he ſaid as a direction of the Court, "They are not diſcharged; put the others back, and let O'Coigly ſtand forward."

*Q.* I would aſk you, whether that form upon which the officer raiſed himſelf to addreſs the Court, was near the place where, as you before deſcribed, the Bow-ſtreet officers were, before the bar, and near Lord Thanet?

*A.* Certainly; he ſet his foot upon the end of the form before

which Lord Thanet ſtood, with certainly, I think, the interval of three or four perſons.

*Q.* Was that expreſſion of the officer's addreſſed audibly to the Court?

*A.* Certainly; I heard it moſt diſtinctly, and, I think, every one muſt have heard it.

*Q.* Did he produce a paper?

*A.* Yes; he ſaid, "No, my Lord, they are not to be diſcharged; I have a warrant againſt Mr. O'Connor;" and he certainly extended his hand with a paper in it.

*Q.* After that direction had been given by the Court which you have ſtated, what then paſſed?

*A.* Mr. Juſtice Buller proceeded to pronounce ſentence upon the priſoner O'Coigly. During the firſt part of the time that he was pronouncing ſentence, my attention was particularly attracted to O'Coigly the priſoner—I was looking at him, and attending to him.

*Q.* The form of the ſentence was introduced by a prefatory addreſs?

*A.* Yes. During the former part of it, my attention was directed to him. Towards the concluſion of the ſentence, I think juſt as Mr. Juſtice Buller came to that part of the ſentence which pronounces the ſpecific puniſhment, I obſerved Lord Thanet and Mr. O'Brien ſtanding in the ſame poſition as they had ſtood before, and I obſerved Mr. O'Brien turn round, and look up at Mr. O'Connor—I wiſh, my Lord, here only to ſtate what I ſaw, and not what my conjecture or conſtruction was upon it.

*Q.* I may take the liberty, however, of aſking you, whether what you ſaw made an impreſſion upon your mind? What that impreſſion was, I ſhall not aſk.

*A.* It did: he looked up at Mr. O'Connor, and then looked down to the place before him, which cannot be ſo well expreſſed in words as by an imitation of the manner; he looked down with a very ſlight motion, certainly an inclination of his head. Lord Thanet was ſtanding with his back againſt the bar, behind which Mr. O'Connor ſtood. I can deſcribe it no other way than ſtanding ſquare as I do now. I did not ſee Lord Thanet make uſe of any motion or geſture, at that time, certainly. The moment the laſt word of the ſentence had been pronounced by Mr. Juſtice Buller, the inſtant he had finiſhed, Mr. O'Connor raiſed himſelf upon the bar: he jumped with his left foot upon the bar; he put his hand upon the ſhoulder of Mr. O'Brien, and, I think, his right upon Lord Thanet's ſhoulder, jumped over the bar between Lord Thanet and Mr. O'Brien, paſſed Mr. O'Brien towards the door of the Court, which was on that ſide next the ſmall ſtreet of Maidſtone ——

*Q.* That is, from the Bow-ſtreet officers?

*A.* Yes:

*A.* Yes: then I loſt ſight of Mr. O'Connor. Whilſt Mr. O'Connor was getting over the bar, which, though it takes ſome ſpace to deſcribe, was done almoſt in an inſtant, the Bow-ſtreet officers were preſſing, endeavouring to get towards him, for the purpoſe of ſtopping him, I ſuppoſe.

*Q.* That is, in the narrow paſs between the back of the ſeat for the counſel for the priſoners, and the bench that was made for the accommodation of their ſolicitors?

*A.* Yes. Lord Thanet certainly ſtood in the poſition in which I had obſerved him. There was a great noiſe, of courſe, took place at that time, at the moment that Mr. O'Connor was getting over the bar; and ſome people calling to ſtop him, there was a great noiſe certainly. Lord Thanet ſtood, in the way that I have deſcribed to your Lordſhip, in the paſs: the officers were endeavouring to preſs by him; and he ſtood till, I think, in a very ſhort ſpace of time, he held up his ſtick with both his hands over his head. There was then a great deal of confuſion: perſons got upon the table; and there was a preſs, in the narrow paſs, of officers and perſons from that ſide of the Court, attempting to preſs towards the door to which O'Connor had ruſhed; and other perſons, whom I cannot ſay, appearing to me to puſh the other way, as if to prevent them from paſſing. I ſaw ſticks raiſed, and fiſts raiſed, by individuals; but who did ſo, I cannot ſpeak to. There became then a general confuſion in that part of the Court, ſo that I loſt ſight of particular individuals: the candles were ſome of them thrown down; they were upon the table; and there was a general riot and confuſion, certainly, in that part of the Court, and in moſt other parts of the Court: at that time a great number of perſons had got upon the table, and there was certainly a great deal of confuſion. In a very ſhort time, ſomebody called out, "O'Connor is ſtopped;" and he was brought back again to the bar. I ſhould ſtate to your Lordſhip, that, juſt at the time that I loſt ſight of Lord Thanet, and of the particular individuals, a perſon had got upon the table, which drew off my attention from what was going on at the bar, and had drawn a ſabre which was lying there.

*Q.* That was part of the baggage of Mr. O'Connor, which had been produced upon the trial?

*A.* It was. He drew that ſabre, and placed himſelf between the Judges and the part of the Court where the confuſion was, obviouſly to prevent any perſons from advancing towards the Judges—if I may uſe the phraſe, to defend the Judges. I did not at that time ſee the face of the perſon who had it; and therefore I had ſome apprehenſion it might be in the hands of ſome imprudent man, who might do miſchief: if I had known who it was, I ſhould have known that he had diſcretion enough not to miſuſe it.

*Q.* It

*Q.* It was Mr. Stafford, the witneſs—was it not?

*A.* Yes. I ſaid to him, not ſeeing his face, "Don't ſtrike." When I ſaw who it was, I was ſatisfied. After the riot had ceaſed, a number of perſons got upon the table towards the Judges—ſome to aſk queſtions upon the ſubject of the legality of this warrant; and others, whether the priſoners were not entitled to their diſcharge; and others, certainly, to allay the fervor that ſeemed to be at that time operating upon the minds of many perſons who were in Court—to reſtore order, in fact; I ſhould, perhaps, uſe that phraſe. The particular converſations and expreſſions that were uſed by any of thoſe perſons upon the table, I cannot pledge myſelf to recollect.

*Q.* I will take the liberty of aſking you, I believe you was at a diſtance from the learned Judge, Mr. Juſtice Lawrence?

*A.* I was: Mr. Juſtice Heath and Mr. Juſtice Buller both ſat between me and Mr. Juſtice Lawrence?

*Q.* Therefore I would aſk you, whether you had an opportunity of hearing any particular converſation addreſſed to the learned Judge who is now preſent?

*A.* No: I think I remember Mr. Sheridan ſpeaking to Mr. Juſtice Buller, or Mr. Juſtice Heath, or both; and I remember Lord Thanet being upon the table after Mr. O'Connor was brought back, apparently to me converſing with the learned Judge, Mr. Juſtice Lawrence.

*Q.* What he ſaid, you did not hear?

*A.* I did not; for at that time there was a great deal of noiſe in the Court.

*Q.* Was it after that, that you obſerved Mr. Sheridan talking with the learned Judge?

*A.* I think it was: the object of Mr. Sheridan ſeemed to be to allay the tumult; and then he croſſed the table, and converſed with the learned Judges.

*Q.* After the direction which you have ſtated to have been given by the Court, and after the ſentence of death had been paſſed, was any order given by the Court for the diſcharge of Mr. O'Connor, or any intimation that he was to be diſcharged?

*A.* Certainly not; but it was broadly expreſſed by the Court that he was not to be diſcharged.

*Croſs-examined by Mr. Erſkine.*

*Q.* I have very few queſtions indeed to put to you. You ſtate, that when the verdict of Not Guilty had been pronounced, ſome perſons, but whom you do not know, ſeemed to inquire, as if for information, whether the priſoners were to be diſcharged or not?

*A.* Not quite ſo—not to inquire; but ſome perſons exclaimed, "Then they are diſcharged."

*Q.* Who

*Q.* Who thoſe perſons were, you do not know?

*A.* I do not.

*Q.* You ſay that you obſerved Lord Thanet ſtanding fronting the Court, as I am now fronting the Court?

*A.* Yes, certainly.

*Q.* With his back to the priſoner?

*A.* Certainly ſo.

*Q.* He was in that poſition when the Jury came in with their verdict?

*A.* I think ſo.

*Q.* You have obſerved that Mr. O'Brien looked round to Mr. O'Connor, and then looked down as you have deſcribed it: Did Lord Thanet continue all that time in the ſame poſition?

*A.* The time when Mr. O'Brien looked round, was a very ſhort time before Mr. O'Connor jumped over the bar: from that time, certainly, Lord Thanet had continued in the ſame poſition, ſtanding as I deſcribed.

*Q.* While the learned Judge was paſſing ſentence of death upon O'Coigly, did Lord Thanet ſtill continue in the ſame poſition?

*A.* Certainly he did.

*Q.* He was ſtanding, as you obſerved, not looking this way towards the jury-box, or that way towards the narrow ſtreet, but he was looking towards the Court?

*A.* Certainly; he had his back againſt the bar, and looking directly towards the Court.

*Q.* You then deſcribe, that upon the officers coming in, and preſſing through this narrow place, the next that you ſaw of Lord Thanet was with a ſtick with both his hands up?

*A.* Yes: I did not mean that the officers came in then, but that they had come in ſome time before having declared that they had a warrant; but, certainly, upon Mr. O'Connor jumping over the bar, the officers ruſhed forward to follow him: after they had made ſeveral puſhes it was that I ſaw Lord Thanet in that poſition.

*Q. Did you ever obſerve any change in the poſition of Lord Thanet, from the time you firſt ſaw him, till you ſaw him in the ſituation you have now deſcribed to the Court?*

*A. I did not obſerve any change.*

*Q. But a ſtick over his head?*

*A. Yes; and, perhaps, I ſhould ſay this—it ſeemed to me, when he held it in that way, that it was to defend his head.*

*Rev. William Huſſey ſworn, examined by Mr. Adam.*

*Q.* I believe you are a clergyman of the Church of England?

*A.* I am.

*Q.* Were

*Q.* Were you at Maidſtone, at the trials of Mr. O'Connor and Mr. O'Coigly?

*A.* I was.

*Q.* Were you there at the time the Jury were out deliberating upon their verdict?

*A.* Part of the time.

*Q.* Were you in Court at the time they returned with their verdict?

*A.* I was.

*Q.* Do you remember ſeeing Lord Thanet in Court at that time?

*A.* I ſaw Lord Thanet in Court.

*Q.* In what part of the Court was you placed?

*A.* At that immediate period of time, I cannot expreſsly ſay in what part; I ſaw Lord Thanet in two different parts of the Court.

*Q.* In what part of the Court did you firſt ſee Lord Thanet?

*A.* The firſt time when he came to give his evidence, and the next time at the table fronting the Judges, and afterwards ſitting under the bar at which the priſoners ſtood.

*Q.* Upon a bench, with his back to the priſoners?

*A.* With his back to the priſoners.

*Q.* Do you remember ſeeing the Bow-ſtreet officers there?

*A.* I ſaw a perſon who, I was informed afterwards, was a Bow-ſtreet officer: I did not know, at that period, that he was a Bow-ſtreet officer.

*Q.* Do you recollect the Jury delivering their verdict?

*A.* I do.

*Q.* Can you ſtate, to my Lord and the Court, any thing that ſtruck your attention upon the Jury delivering their verdict of Not Guilty with reſpect to Mr. O'Connor?

*A.* After the Jury returned their verdict of Not Guilty, I obſerved Mr. O'Connor make a feint to get over the bar; he put up his foot as if he would get over.

*Q.* Did you obſerve any thing more paſs at that time?

*A.* I cannot ſpeak expreſsly as to the direct period of time at which I ſaw the circumſtance happen; whether it was at that period, or a future period, I muſt ſay that I cannot immediately recollect.

*Q.* What was that circumſtance?

*A.* That the Earl of Thanet was in that ſituation which I before mentioned, ſitting with his back towards the bar, nearly under the priſoners, or under the jailor, and as the perſon was preſſing forward from that ſide of the Court to get towards the priſoners.

*Lord Kenyon*—What perſon?

*A.* I cannot ſay who the perſon was; I was informed afterwards he was a Bow-ſtreet officer: and, indeed, from the circumſtance of his mentioning to the Jury what was the matter—

ter—he ſaid he had a warrant to apprehend Mr. O'Connor—I ſuppoſed him to be a peace-officer.

*Mr. Adam*—Then, as this perſon, who held a paper in his hand, and preſſed forward ——

*A.* I ſaw no paper in his hand; *Lord Thanet ſeemed to preſs himſelf againſt the bar with his body inclined ſomewhat towards that perſon, apparently with an intention to interrupt his progreſs towards the priſoner.*

*Q.* In what ſituation was Mr. O'Connor at that time?

*A.* Mr. O'Connor, at that period, was ſtanding at the bar.

*Q.* Go on, and ſtate what you ſaw after this?

*A.* Upon my word, from the confuſion that was in the Court, I do not recollect any particular circumſtance that I can take upon me to ſpeak to.

*Lord Romney ſworn, examined by Mr. Wood.*

*Q.* Was your Lordſhip in Court at the time of the trials of the priſoners at Maidſtone?

*A.* Yes.

*Q.* In what part of the Court did your Lordſhip ſit?

*A.* Next to Mr. Juſtice Lawrence, upon the bench.

*Q.* Does your Lordſhip know the defendant Mr. Ferguſſon?

*A.* I did not know Mr. Ferguſſon before the trials at Maidſtone: I had ſeen him ſo often then, that I knew him in his gown; if I was to ſee him out of his gown, I do not know that I ſhould know him—I knew him perfectly in his gown.

*Q.* After the riot began, what did your Lordſhip obſerve?

*A.* When the riot firſt began, I looked very much towards the priſoner O'Connor, and ſaw him get over the bar, and go towards the narrow ſtreet. I looked at the other part of the Court, where there were individuals forcing a paſſage through, which were the Bow-ſtreet officers; I ſaw them forcing their way, and blows were ſtruck. I paid particular attention to Mr. O'Connor, and then, almoſt at the ſame moment, turned my eyes to a different part upon the table, where there was a ſword brandiſhing about: I don't know whether it was drawn or not, for I could not ſee at that time; but I ſhould imagine it was drawn: upon which I thought things ſeemed to bear a very ſerious aſpect, and I let myſelf down from the bench where I was ſitting, and croſſed the table directly to where I ſaw the priſoner eſcaping from. I dipped my head under the broad ſword that was brandiſhing about: I got immediately to the end of the table, near that part of the Court where the priſoner eſcaped from; and as ſoon as I got there, I immediately ſaw the priſoner O'Connor brought back to that part of the table by ſeveral javelin-men and others. I then immediately ſaid to the javelin-men, "Form yourſelves round the priſoner, and let no one approach you, or let no one come round

*ſaid, "He is not diſcharged." Mr. Fergusſon then addreſſed Mr. O'Connor, and ſaid, "You are diſcharged." I repeated, "He is not diſcharged," I believe more than once.* I obſerved the jailor leaning over towards Mr. O'Connor, and I think he took hold of him.

*Mr. Garrow*—The other priſoners were between the jailor and Mr. O'Connor, were they?

*A.* Two of them were, and the other two behind Mr. Binns and Mr. O'Coigly; and then Mr. Allen and Mr. Leary were behind. Then Mr. O'Connor drew back his leg: there was then a diſturbance immediately under Mr. O'Connor, and ſome perſon or perſons preſſing forward, and Mr. Fergusſon made ſome complaint to the Court upon the ſubject; then Rivett the officer, who appeared to be the perſon preſſing forward, ſaid ——

*Mr. Fielding*—When you ſay *preſſing forward*, in what kind of direction was that preſſure?

*A.* Towards Mr. O'Connor.

*Q.* That was not forward towards the body of the Court, but towards Mr. O'Connor?

*A.* It was towards the body of the Court, in order to get to Mr. O'Connor, and place himſelf under Mr. O'Connor, as I conceived. Rivett ſaid he had got a warrant againſt Mr. O'Connor; and the jailor alſo ſaid ſomething upon the ſame ſubject, but I do not recollect the particular words; and Mr. Juſtice Buller ſpoke to the officers, as I underſtood, to keep the priſoners back, or ſome expreſſion of that deſcription, and then almoſt inſtantly began addreſſing Mr. O'Coigly.

*Lord Kenyon*—With a view to paſs the ſentence?

*A.* With a view to paſs the ſentence. I recollect that this was almoſt inſtantaneous; becauſe I was about to ſpeak to the Court—and it was ſo ſudden, that I thought it was indecent to interrupt Mr. Juſtice Buller, otherwiſe I ſhould have ſpoken to the Court.

*Mr. Garrow*—Mr. Attorney Geneneral had retired from the Court?

*A.* He had retired from the Court, and had defired me to ſpeak to Mr. Juſtice Buller upon the ſubject, which I had done after Mr. Juſtice Buller had paſſed ſentence upon Mr. O'Coigly. I fixed my eye particularly upon Mr. O'Connor, *and I obſerved Mr. Fergusſon, and ſome other perſons whom I did not know, encouraging Mr. O'Connor to go over the bar.* Mr. O'Connor appeared for a little while to heſitate, but it was only for a moment: he then ſprung over the bar, and leaped into the lower part of the Court, between the bar and the jury-box, which was on the right hand of the Judges. From that time I did not ſee Mr. O'Connor until he was brought back by the officers; for at the ſame inſtant that Mr. O'Connor jumped over the bar, three or four perſons whom I did not know, leaped over from the box oppoſite the jury-box upon the table.

*Mr.*

*Mr. Garrow*—Was that box the box where the witneſſes had been examined?

*A.* Where the witneſſes had been examined, and where perſons who attended the trial through curioſity had been. They went to the ſpot where the riot was, and jumped amongſt the rioters: all the lights, except thoſe before the Judges, and the lights which hung in the middle of the Court in a kind of branch or chandelier—I do not recollect exactly what ſort of a thing it was; it gave a conſiderable light—but all the other lights were extinguiſhed.

*Mr. Garrow*—The chandelier that hung over the priſoners?

*A.* In the middle of the Court: there were, I think, three patent lamps in it—it gave a great deal of light. *Mr. Ferguſſon, at the moment that Mr. O'Connor jumped over the bar, turned himſelf round, and appeared to me to follow Mr. O'Connor; but I cannot poſitively ſay that he did ſo, becauſe the perſons who ruſhed from the other ſide of the Court came between me and him;* but I recollect that when they were paſt I did not ſee him. I then attended to the priſoner O'Coigly, apprehenſive that he might eſcape; and that attracted my attention in ſome degree from what was paſſing in the riot: he was perfectly tranquil; and I was convinced, from his behaviour, that he did not mean to ſtir; and therefore my attention was drawn back again to the riot. Mr. Knapp's clerk, Mr. Stafford, jumped upon the table, and drew Mr. O'Connor's ſword—a kind of broad ſword, I think—which was lying upon the table; and he flouriſhed it over the heads of the perſons who were engaged in the riot below. I got up to ſpeak to him, to deſire him to put up the ſword, which, after ſome time, he did; and ſoon after Mr. O'Connor was brought back. Mr. Stafford being between me and the rioters, prevented me from ſeeing what paſſed after the riot was over. I do not recollect any thing material, except Lord Thanet; that is, a perſon whom I underſtood to be Lord Thanet. I did not know Lord Thanet's perſon; that is, I did not recollect him: I had ſeen him many years ago. *I ſaw a perſon, who I underſtood to be Lord Thanet, come acroſs the table; and I ſaw him in converſation with Mr. Juſtice Lawrence: that converſation was a little warm, but I did not hear the particulars of it. When my Lord Thanet left Mr. Juſtice Lawrence, and went acroſs the table again, I heard him ſay, "I thought it was fair he ſhould have a run for it."*

*Q.* Was that addreſſed to the Judge in parting from him and going acroſs the table?

*A.* I think it was not addreſſed to the Judge, but as he turned from the Judge: *he ſaid it rather in a tone of anger; I think it was in conſequence of what had fallen from Mr. Juſtice Lawrence, which I did not exactly hear.*—I do not recollect any thing elſe.

*Mr.*

Mr. Fielding—*Will you have the goodneſs to explain what you meant by encouraging Mr. O'Connor to get over the bar?*

A. *It was not immediately encouragement, by any words that I could hear; but by action, as if he was encouraging him to come over the bar, and by inſiſting that he was diſcharged.*

Croſs-examined by Mr. Beſt.

Q. *While Mr. Ferguſſon was ſpeaking to Mr. O'Connor, he was in his place at the bar?*

A. *He was.*

Q. *There was a vaſt number of other perſons at the ſame time ſpeaking to Mr. O'Connor?*

A. *Yes.*

Q. I believe it was generally underſtood in the Court at that time, that Mr. O'Connor would be acquitted?

*A.* I do not know whether they were congratulating him; it was after he was acquitted.

Q. You ſay he was in his place at the bar: do you recollect ever ſeeing him quit his place at the bar?

*A.* I have already ſaid, I think he did: I have already ſtated, I am not poſitive as to the time, but that I did not ſee him when the ruſh that paſſed between me and Mr. O'Connor was made.

*Mr. Juſtice Heath ſworn, examined by Mr. Attorney General.*

Q. Your Lordſhip, I believe, was one of the Commiſſioners of Oyer and Terminer at Maidſtone?

*A.* I was.

Q. Did your Lordſhip obſerve any riot that took place.

*A.* I did; and if you will give me leave, I will ſtate all that I obſerved. I was applied to, in the courſe of the day, by a meſſenger from the Secretary of State, who informed me that a warrant was iſſued for the apprehenſion of Mr. O'Connor in caſe he ſhould be acquitted, and deſiring to know if the the Court would permit him to execute that warrant if he ſhould be acquitted; and we gave leave. After the verdict had been given, and, I believe, after ſentence of death had paſſed, this meſſenger very unadviſedly went from that corner of the box where the priſoners were confined, to that corner which was near the door, and ſaid aloud, "My Lord, may I now execute my warrant?" Preſently after, I ſaw Mr. O'Connor thruſt one leg over the box, and then draw it back again: afterwards, in the ſpace of a minute, I ſaw him leap over the box. I could not ſee any perſon between him and the door at that moment: immediately a great ſcuffle and a riot enſued, and a great deal of fighting, ſuch as I never ſaw before in a Court of Juſtice; it appeared to me to be between the conſtables with their ſtaves

on

on one ſide, and thoſe who favoured the eſcape of O'Connor on the other. I know not from whence the favourers of Mr. O'Connor came; it being dark, I could not ſee exactly the number of the combatants; it was dark in that place where they were fighting: but, from the exertion of the conſtables in plying their staves, it ſeemed to me that there muſt have been ten or twenty, I ſuppoſe, all fighting together. I ſaw a man with a naked ſabre, brandiſhing it over the heads of the combatants; one of the officers of the Court, I believe, came up to me with a brace of piſtols, which, I believe, belonged to Mr. O'Connor, and lay upon the council-table, ſaying, "I have ſecured theſe at laſt." This combat, I ſuppoſe, might laſt five, ſix, or ſeven minutes; I cannot exactly ſay how long: *but, in the courſe of it, I ſaw Mr. Ferguſſon ſtanding upon the table, together with many others; he turned round towards the Commiſſioners, and ſaid, I believe particularly addreſſing himſelf to me, "My Lords, the conſtables are the perſons that are the rioters; they are the occaſion of it," or words to that effect. Before I could give him an anſwer, he turned round again towards the combatants; it was impoſſible, from the noiſe, for him to hear any thing I could ſay to him: my attention was chiefly turned from him to the more intereſting ſcene of the fight; but I muſt do him the juſtice to ſay, that, in the very ſhort time I ſaw him, which was not above a minute or ſo, I did not obſerve him ſay or do any thing to encourage the riot.* I thought myſelf in great danger, and that we were all ſo. I could not gueſs at the view of the rioters, how far it extended, or whether they had any and what arms; indeed we were more alarmed, becauſe we had intelligence before-hand, that there was a very diſaffected party in the town.—That is all I have to ſay.

*Charles Abbott, Eſquire, ſworn, examined by Mr. Law.*

*Q.* Was you in Court when the Jury brought in their verdict?

*A.* I was.

*Q.* Did you obſerve any motion made by Mr. O'Connor towards quitting the bar?

*A.* I do recollect that Mr. O'Connor made a motion with his body as if he would leave the bar. *Mr. Ferguſſon, almoſt at the ſame inſtant, ſaid, "He is diſcharged." Mr. Solicitor General then called acroſs the table, "No, ſtop him, he is not diſcharged."* Juſt at the ſame inſtant, one of the officers, either Rivett or Fugion, but I cannot ſay which, got upon the form and preſſed forward towards Mr. O'Connor, and at the ſame time ſaid he had a warrant; there was then a little confuſion for a ſhort ſpace of time, but not very long; the priſoners reſumed their places, and Mr. Juſtice Buller proceeded to paſs the

the ſentence upon Mr. O'Coigly. During this time I had been ſitting almoſt immediately under Mr. Juſtice Buller, very nearly ſo. At the very inſtant that Mr. Juſtice Buller had cloſed the ſentence, I obſerved Mr. O'Connor leap over from the bar towards his left hand; a very great tumult and confuſion immediately took place; and, ſhortly afterwards, I ſaw a perſon, whom I ſoon learned to be Mr. Stafford, drew a ſabre, and went to that corner of the table where the confuſion was. Mr. Garrow cautioned him not to ſtrike; and he did not appear to aim the ſabre at any body, but merely to keep it moving over their heads. When this ſecond tumult began, I roſe up and ſtood upon the form upon which I had been ſitting, ſo that I was ſtanding before Mr. Juſtice Buller and Mr. Juſtice Heath, with my back towards them: when the confuſion began to abate, I turned round, and entered into ſome converſation with Mr. Juſtice Buller; and ſoon after this, while I was in that ſituation, I ſaw my Lord Thanet ſtanding on the table, nearly before Mr. Juſtice Lawrence, which was towards my right hand. *I heard Mr. Juſtice Lawrence ſpeak to Lord Thanet to this effect*—"*I think it would be an act of kindneſs in Mr. O'Connor's friends to adviſe him to go quietly to the priſon, leſt ſome miſchief ſhould happen:*" *I do not pretend to ſtate the learned Judge's words; but the ſubſtance, I believe, I am correct in. Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me; and I did not diſtinctly hear the firſt words that he uttered, but the concluding words were either* "*to have a run for it,*" or "*fair to have a run for it.*" *I will not be quite certain of the word* "*fair;*" *but of the words* "*to have a run for it,*" *I am quite certain.* I have the more particular recollection of this, becauſe, ſhortly afterwards, I obſerved Mr. Sheridan at the ſame part of the table, and heard Mr. Juſtice Lawrence ſpeak to him to the ſame effect that he had before ſpoken to my Lord Thanet. Mr. Sheridan anſwered with great civility, either that he had done ſo, or that he would do it: it was the different manner of Mr. Sheridan to that of my Lord Thanet that made me recollect that.

*Q.* Do you recollect Mr. Juſtice Lawrence making an obſervation upon that?

*A.* Yes.

*Mr. Erſkine*—To whom?

*A.* To Mr. Sheridan.

*Q.* In the preſence of Lord Thanet?

*A.* No; he was gone: and I recollect that Mr. Juſtice Lawrence ſaid to Mr. Sheridan, that he had made the ſame obſervation to another gentleman.

*Mr. Law*—Have you any doubt of the words ſpoken by Lord Thanet, "to have a run for it?"

*A.* I have not.

*John*

*John Rivett ſworn, examined by Mr. Garrow.*

*Q.* Did you attend at Maidſtone as a witneſs upon the trial of O'Connor and others?

*A.* I did.

*Q.* Was any application made to you by one of his Majeſty's meſſengers to aſſiſt in apprehending Mr. O'Connor, if he ſhould be acquitted by the Jury?

*A.* Yes, there was.

*Q.* Did you, in conſequence of that, go into Court with a view to give that aſſiſtance?

*A.* Yes, I did.

*Q.* Who went with you?

*A.* Fugion, my brother-officer.

*Q.* He was another officer of the police?

*A.* Yes, and the meſſenger; we all three went into Court together.

*Q.* Is Fugion ſince dead?

*A.* He is.

*Q.* After you had gone into Court, do you remember ſeeing a gentleman of the name of Thompſon?

*A.* I was informed that was the gentleman's name.

*Q.* Should you know him now if you was to ſee him?

*A.* I think I ſhould: I have never ſeen him ſince—I was very near the bar where the priſoners ſtood.

*Q.* At which end of the bar was you? was you on the ſide the fartheſt from Mr. O'Connor, or the neareſt?

*A.* Neareſt to the jailor, which was the right-hand ſide of the bar.

*Q.* While you was in this poſition, had you any converſation with a gentleman you underſtood to be Mr. Thompſon?

*A.* Yes.

*Q.* State it to the Court?

*A.* The gentleman whom I underſtood to be Mr. Thompſon, a Member of Parliament, aſked me, "what I did there?" I made him little or no anſwer. He then ſaid, "What buſineſs have you here?" or words to that effect; "have you got any thing againſt Mr. O'Connor?" meaning, as I ſuppoſed, a warrant; I did not know what his meaning was; I replied, "No." I believe he aſked Fugion likewiſe, to the beſt of my recollection.

*Q.* You and Fugion had been both examined as witneſſes upon the circumſtance of the apprehenſion of Mr. O'Connor?

*A.* We had.

*Q.* And, to the beſt of your recollection, Mr. Thompſon put the ſame inquiry to Fugion?

*A.* He did.

*Q.* What then paſſed?

*A.* I then obſerved a gentleman, whom I knew to be Mr. O'Brien,

O'Brien, at the farther end of the Court; I obſerved Mr. O'Brien whiſpering ſomething to Mr. O'Connor over the bar.

*Q.* Deſcribe particularly where Mr. O'Brien was placed during that time?

*A.* He was on the left-hand ſide of the bar, by Mr. O'Connor; I was on the right-hand ſide, and he on the left: a few minutes might elapſe, when Mr. Thompſon put up his finger to catch the eye of Mr. O'Brien, and beckoned to him; a few minutes might elapſe, when Mr. O'Brien came to the ſame ſide where I ſtood.

*Q.* Did Mr. Thompſon ſtill continue ſtanding by you?

*A.* Yes, he did.

*Q.* How long was this before the verdict was given?

*A.* Whilſt the Jury were out conſidering their verdict.

*Q.* When Mr. O'Brien came to the place where you and Mr. Thompſon were ſtanding, what took place?

*A.* Mr. O'Brien and Mr. Thompſon ſpoke to each other; but what they ſaid I cannot tell. Mr. O'Brien then addreſſed me, and ſaid, "Have you got a warrant againſt Mr. O'Connor?" I ſaid, "No." Then he ſaid, "Then Fugion has."

*Q.* Do you mean that he made uſe of Fugion's name?

*A.* Yes; Fugion was preſent, and he anſwered immediately that he had not. He ſaid, "Fugion, have you got the warrant?" He addreſſed himſelf to Fugion; Fugion ſaid, "No." Then Mr. O'Brien ſaid, "Then the meſſenger has."

*Q.* Had Wagſtaffe his badge as King's meſſenger on at that time?

*A.* I do not recollect.

*Q.* Do you mean to ſay that he addreſſed himſelf to the meſſenger?

*A.* No; he ſaid, "Then the meſſenger has." I then replied, "I can anſwer only for myſelf." Mr. O'Brien then ſaid, "I will bet you three guineas," I think it was, to the beſt of my recollection, "that you have." Fugion ſaid, "Done," I believe, or words to that effect. Mr. O'Brien then left the ſide of the Court that I was on, and returned to the left-hand ſide where Mr. O'Connor was, and whiſpered ſomething to Mr. O'Connor; but what, I cannot tell.

*Q.* What obſervation did you make at that time, with reſpect to any other perſons in the Court, as to any change of poſition?

*A.* It remained quiet till the Jury were coming in: a number of gentlemen ſeated themſelves directly before me in the place where I ſtood.

*Q.* That was upon the bench made for the priſoners' attorneys?

*A.* Yes.

*Q.* Many gentlemen ſeated themſelves there?

*A.* Yes.

Q. Did

*Q.* Did you know any of thoſe perſons?

*A.* Not that were ſitting down before me; ſome time had elapſed, when there was ſome noiſe when the Jury were coming into Court, "Make way for the Jury," or ſomething to that effect. I then endeavoured to get as nigh Mr. Watſon, the jailor, as I poſſibly could. I went to ſtep my foot up to get nigh the bar, and I was pulled down again by my leg; I turned round, and the perſon who pulled me down, I ſuppoſed, was Mr. Thompſon.

*Q.* Do you mean to ſay, you know it was Mr. Thompſon; or, from the ſituation he was in, that you apprehended it was Mr. Thompſon?

*A.* Exactly ſo.

*Q.* You do not aver the fact poſitively?

*A.* No: but when I turned round, he was cloſe to me.

*Q.* And therefore you conclude he was the perſon that pulled you?

*A.* Yes: the Jury then came in, and I endeavoured to get up again as near the bar as I poſſibly could.

*Q.* When you uſe the expreſſion, that you endeavoured to get up as near the bar as you could, was there any thing that prevented you from getting there?

*A.* Only the gentlemen ſitting there.

*Q.* With what view was that?

*A.* With a view to aſſiſt in ſecuring Mr. O'Connor, if he ſhould attempt to make his eſcape.

*Q. Upon your endeavouring to get as near the bar as you could, what happened?*

*A. The Jury were in, and the Court called "Silence." The Jury had given their verdict—Mr. O'Connor and the others, Not Guilty; and Mr. O'Coigly, Guilty; and then I got up nigh the bar. I obſerved ſomething in Mr. O'Connor that ſtruck me as if he meant to make his eſcape; at that moment there was ſome noiſe in the Court, and Mr. Ferguſſon ſays, "What buſineſs has that fellow there, making ſuch a noiſe?"*

Lord Kenyon—*Who was that addreſſed to?*

*A. It was addreſſed to the Court, I believe. Upon that I got up upon one of the benches, and addreſſed the Judge, and told him my reaſons for being there. I told his Lordſhip I had a warrant from the Duke of Portland to arreſt Mr. O'Connor; the Judge replied, "I ſhould have him," or words to that effect; and deſired the jailor to take care of all the priſoners for the preſent.*

*Q. Which of the Judges was that?*

*A. Judge Buller; then the ſentence was paſſed upon Mr. O'Coigly. As ſoon as the Judge had ſo done, Mr. O'Connor immediately jumped out of the bar: there was then a very great confuſion in Court; thoſe gentlemen, who had ſo placed themſelves*

*ſelves before me, ſtood up; I called out, "Shut the door, ſhut the door," ſeveral times.*

Q. *After Mr. O'Connor had jumped over the bar, which way did he take?*

A. *He took to the left.*

Q. *He took the direction going from you?*

A. *Yes.*

Q. *That was, as we have been deſcribing, towards the narrow ſtreet?*

A. *Yes; I then endeavoured to get forward, but was prevented by thoſe gentlemen who had ſo placed themſelves quite before me and Fugion and the meſſenger.*

Q. *Now deſcribe particularly what paſſed which prevented you, with your aſſiſtants, from following Mr. O'Connor?*

A. *I was pulled down, or ſhoved down, twice or three times; but by whom, I am not able to ſay.* I THEN JUMPED FORWARD AS WELL AS I WAS ABLE, AND WAS ENDEAVOURING TO PURSUE MR. O'CONNOR; MR. FERGUSSON JUMPED UPON THE TABLE, AND WITH A STICK FLOURISHED IT IN THIS WAY, TO PREVENT MY GETTING FORWARD.

Q. *Flouriſhed it over your head?*

A. *He flouriſhed it with an intent, as I preſume, to ſtop me.*

Q. *Was Mr. Ferguſſon in his profeſſional dreſs?*

A. *Yes, he was;* I THEN SPRUNG AT HIM, AND WRENCHED THE STICK OUT OF HIS HAND, AND HE RETURNED BACK TO HIS FORMER SITUATION.

Q. *He went from off the table, and returned to his place at the table?*

A. *Yes; otherwiſe I ſhould have ſtruck him with the ſtick which I had wrenched from him, if he had not that moment got away.*

Q. *Deſcribe what more took place?*

A. AS SOON AS I RECOVERED MYSELF, I WAS THEN KNOCKED DOWN BY SOME PERSON WHO DROVE AGAINST ME —NOT WITH A STICK; AND AS SOON AS I HAD RECOVERED MYSELF, I SAW THE PERSON WHO HAD SO SHOVED ME DOWN; I IMMEDIATELY STRUCK HIM WITH MY STICK; I REPEATED MY BLOWS THREE OR FOUR TIMES; THAT PERSON CALLED OUT, "DON'T STRIKE ME ANY MORE." I REPLIED, "I WILL; HOW DARE YOU STRIKE ME." *That perſon I ſo ſtruck was, as I underſtood while I was in Court, the Earl of Thanet.*

Q. *Are you quite certain that the perſon you ſtruck and repeated your blows with a ſtick, was the perſon who ſhoved you down?*

A. *Yes.*

Q. *And that perſon, whilſt you continued in Court, you underſtood was my Lord Thanet?*

A. *Yes.*

Q. *Should*

Q. *Should you know his perſon now?*

A. *I think I ſhould.*

Q. *Look round the Court, in all parts of it, and ſee if you ſee his Lordſhip here—is that the perſon you ſtruck who ſits next Mr. Gibbs?*

A. *I believe it is; I cannot poſitively ſay, becauſe I have never ſeen the gentleman but once ſince that time.*

Q. *From the appearance of his Lordſhip, from his perſon and make, do you now believe him to be the perſon?*

A. *I cannot poſitively ſay.*

Q. *Have you reaſon to believe that that gentleman is the perſon?*

A. *I have ſome reaſon to believe ſo,* FROM HIS SIZE.

Q. *Did you afterwards, in the courſe of your continuance in Court, ſee Lord Thanet in any other part of the Court?*

A. *He was pointed out to me immediately after.*

Q. *Upon the ſpot?*

A. *Upon the ſpot.*

Q. *I don't know whether you recollect how he was dreſſed?*

A. *No, I do not.*

Q. *Who was the perſon that told you that the name or title of the perſon with whom you had the conteſt was Lord Thanet?*

A. *Mr. O'Connor, after being ſecured and brought back again into the bar.*

Q. *Mr. O'Connor gave the title of Lord Thanet to the perſon with whom you had had the conteſt?*

A. *Yes.*

Lord Kenyon—*Was it a converſation addreſſed by Mr. O'Connor to you?*

A. *It was.*

*Mr. Garrow*—After you had given theſe blows to the perſon ſuppoſed to be Lord Thanet, what paſſed?

*A.* I obſerved Mr. O'Connor was in cuſtody—he had been ſecured by the door-way: I then aſſiſted in getting him back to the bar.

*Q.* You deſcribed juſt now, that when you was attempting to puſh on to prevent Mr. O'Connor eſcaping, you was interrupted by the perſons who had placed themſelves before you?

*A.* Yes.

*Q.* Do you mean that it was merely by the accident of their being there, or that they gave you any obſtruction?

*A.* While the Jury were out, they came, and a great number more than had been there at the time of the trial, and placed themſelves juſt before where I ſtood.

*Q.* Are you acquainted with Mr. Gunter Browne?

*A.* No, I am not.

*Q.* Do you remember any body remarkable in his appearance or perſon obſtructing Fugion or Wagſtaffe?

*A.* No, I did not obſerve it, I was ſo engaged myſelf.

*Croſs-*

*Croſs-examined by Mr. Erſkine.*

*Q.* You have ſtated to my Lord and the Jury, that, from ſomething that paſſed, you expected Mr. O'Connor to attempt to make his eſcape?

*A.* Yes.

*Q.* I take it for granted, that the apprehenſion that he wanted to make his eſcape, induced you to go forward?

*A.* Yes; I got as near the bar as I could.

*Q.* It made you more deſirous with the other officers to puſh forward quickly?

*A.* Surely ſo.

*Q.* If you had had no reaſon to ſuppoſe Mr. O'Connor was endeavouring to eſcape, and that others had a diſpoſition to aſſiſt him, I take it for granted you would have gone on more leiſurely?

*A.* No doubt.

*Q.* But the apprehenſion that you had, that you might be diſappointed in the execution of your warrant, made you go on with conſiderable rapidity?

*A.* I went ſwifter than I ſhould have done if I had not been moleſted, no doubt.

*Q.* The line that you was going in at that time, was a place not very unlike where I am ſtanding now, immediately before the priſoners?

*A.* Yes.

*Q.* That is to ſay, a place like that I am now ſtanding in, divided by ſomething like this from the place where the Counſel ſat?

*A.* Juſt ſo.

*Q. You ſay that you jumped forward as well as you was able, and was endeavouring to purſue Mr. O'Connor, when Mr. Ferguſſon jumped upon the table, and with a ſtick flouriſhed in this way, to ſtop you?*

A. *Yes.*

*Q. That was the firſt obſtruction you met with?*

A. *No; I was pulled by the leg.*

*Q. But, except that pulling by the leg, after you purſued your progreſs through the Solicitors' box, the firſt interruption you met with, was by Mr. Ferguſſon jumping upon the table?*

A. *No; I had been puſhed down before that.*

*Q. Had you ſtruck any body before that?*

A. *No.*

*Q. Had you ſhoved or puſhed any body?*

A. *I cannot tell that; in the confuſion I might.*

*Q. You had not ſeen Lord Thanet till after this had paſſed with Mr. Ferguſſon?*

A. *To my knowledge, I had not.*

*Q.* Lord

Q. Lord Thanet is a very ſtrong, big man?

A. Yes, he is ſo.

Q. Then you had not ſeen Lord Thanet till after you had been with Mr. Ferguſſon, at this time upon the table?

A. No, I had not.

Q. And you had ſhoved againſt ſeveral others?

A. I probably might, in the endeavour to get forward.

Q. I would aſk you, how you came to leave the line of the Solicitors' box, as you was advancing towards Mr. O'Connor to go up where Mr. Ferguſſon ſtood?

A. I did not go up to where Mr. Ferguſſon ſtood; the firſt time I placed myſelf, was by the right-hand ſide of the bar; Mr. Ferguſſon might have attacked me about the middle of the bar.

Q. After you ſaw Mr. O'Connor jump over the bar, and when you was apprehending that you might be diſappointed in arreſting him, you went forth with all the rapidity you could—Now, how came you to leave the courſe which directly led to him, to go up to the table where Mr. Ferguſſon ſtood?

A. There had been a great many gentlemen in the corner, and I got a little farther to the right.

Q. Towards the table where Mr. Ferguſſon was?

A. Yes.

Q. He was ſtanding upon the table, and you upon the ground?

A. No; upon the bench. I might be upon the ground ſometimes; for I was up and down ſeveral times.

Q. Mr. Ferguſſon was upon the table, flouriſhing a ſtick over you, in his wig and gown, and you forcibly wrenched it out of his hand?

A. Yes; and if he had not got away, he would have recollected me another time.

Q. Now you take upon you to ſay, that when this tranſaction took place, he returned to the table, and went to his ſeat?

A. He turned back, and went from me to the table.

Q. Did he go towards Mr. O'Connor?

A. No; he turned towards the Judges.

Q. *Then it was not until after this tranſaction had paſſed, when Mr. Ferguſſon had flouriſhed his ſtick in this manner, and had gone away towards the Judges, that you met with Lord Thanet?*

A. *Juſt ſo.*

Q. *What interval of time might there be between Mr. Ferguſſon's going away in the manner you deſcribe, and your meeting with Lord Thanet?*

A. *A very few minutes—a minute or two.*

Q. Where was it you met with Lord Thanet?

A. A very little diſtance from me.

Q. Was

*Q.* Was he in the Counſels' ſeat, or where?

*A.* I don't know what you call the Counſels' ſeat; he was upon the benches: as ſoon as I turned from Mr. Ferguſſon, I was immediately ſhoved down.

*Q.* Was the perſon you took to be Lord Thanet upon a bench by where the table ſtood?

*A.* I cannot ſay.

*Q. Had he a ſtick?*

*A. He had no ſtick, that I recollect.*

*Q.* Then Lord Thanet having no ſtick, what aſſault did he make upon you?

*A.* With his fiſt, in this way, ſhoved me down as I was going forward—he ſhoved me back.

*Q. And then you ſtruck him?*

*A. Yes: as ſoon as I recovered myſelf, I ſtruck him two or three blows.*

*Q. With what?*

*A. The ſtick that I took from Mr. Ferguſſon.*

*Q.* My Lord Thanet had no means of parrying that blow?

*A.* No; he did not attempt to ſtrike me afterwards.

*Q.* Where was he at the time you ſtruck him two or three times?

*A.* When I hit him the firſt time, he fell upon his ſide, this way.

*Q.* Did you ſtrike him after that?

*A.* Yes.

*Q.* Mr. Ferguſſon was gone away?

*A.* Yes.

*Q.* Mr. Ferguſſon did nothing to endeavour to extricate Lord Thanet from you?

*A.* No.

*Q.* Did you ſtrike any body elſe but Lord Thanet?

*A.* I do not know that I did; I might by accident.

*Q.* If you ſtruck any body elſe beſides Lord Thanet, it was by accident?

*A.* Yes.

*Q.* Did you ſee either Fugion, Adams, or Wagſtaffe, who were there, ſtrike any body?

*A.* No, I did not.

*Mr. Garrow*—Do you remember ſeeing Fugion ſtrike any body?

*A.* No.

*Q.* You ſaid you was not before acquainted with the perſon of Mr. Thompſon?

*A.* No.

*Q.* Should you know him again now?

*A.* I ſhould think that little gentleman is him.

*Mr. Gibbs*—This gentleman? (*putting his finger on Mr. Thompſon.*)

*A.* No; the next gentleman.

*Q.* This

*Q.* This gentleman? (*putting his finger on Mr. Bonney.*)
*A.* Yes; I think that is him.

*Sir Edward Knatchbull ſworn, examined by Mr. Adam.*

*Q.* Were you at the trial of O'Coigly, O'Connor, and others, at Maidſtone?
*A.* I was.
*Q.* Were you preſent in Court at the time the riot took place?
*A.* I was.
*Q.* Will you ſtate to my Lord and the Jury, whether you ſaw Rivett, the Bow-ſtreet officer, engaged with any perſon, and with whom?
*A.* Previous to the ſentence being paſſed upon O'Coigly, I ſaw Rivett, the Bow-ſtreet officer, on the priſoner's right hand; he produced ſome paper, which I underſtood at the time to be a warrant from the Duke of Portland to ſecure the perſon of Mr. Arthur O'Connor; after that, there was ſome converſation paſſed between the Judge and Rivett, which I do not immediately recollect. *I ſaw Lord Thanet ſeat himſelf under the priſoners at the bar, immediately at the concluſion of the ſentence being paſſed upon O'Coigly.* I ſaw Rivett, who appeared to me to be placed in a ſituation in order to prevent Mr. O'Connor's eſcape. I ſaw Mr. O'Connor put his right foot, I think it was, upon the bar, his left hand upon the railing, and his right hand either upon ſome perſon's ſhoulder that was ſitting under, or elſe upon the rail, and jump into the crowd. I can only ſpeak now as it ſtruck me at the time; it appeared to me that *Lord Thanet roſe from his ſeat as ſoon as Mr. O'Connor jumped into the crowd; he roſe from his ſeat in order to prevent Mr. Rivett from ſecuring the perſon of Mr. O'Connor.* There was ſome perſon—who it was, I cannot pretend to ſay; but it was ſome perſon rather with a bald head—a perſon whom I ſhould not know again if I was to ſee him——
*Q.* Can you tell how he was dreſſed?
*A.* No, I cannot; but there was ſome perſon who took hold of Rivett, at leaſt it had that appearance to me in the buſtle; he took hold of Rivett, and pulled him, endeavouring to keep him back; Lord Thanet was between Rivett, and where Mr. O'Connor had leaped out of the pound. I know nothing further; that is all I ſaw of the buſineſs. I cannot pretend to ſay what paſſed afterwards.
*Q.* Did you ſee any fighting, or any blows ſtruck?
*A.* It did appear to me, but I can by no means ſpeak poſitively to it, that when a perſon, whoever it was, was endeavouring to keep Rivett back, Rivett, if I may make the geſture, for I do not know how to deſcribe it, *Rivett, in this kind of way, ſtruck Lord Thanet in the ſide, as it appeared to* me;

*me; but I cannot ſay whether he ſtruck Lord Thanet, or not, at that diſtance;* nor did I ſee him make a blow at any perſon.

*Q.* Are you ſure that Lord Thanet was ſtanding in that part of the Court?

*A.* I am quite certain that he went there when ſentence had paſſed.

*Thomas Watſon ſworn, examined by Mr. Wood.*

*Q.* You are the jailor of Maidſtone, I believe?

*A.* I am.

*Q.* Was you in Court at the trial of theſe priſoners?

*A.* Yes, I was.

*Q.* Do you remember the Judges giving any directions not to diſcharge the priſoner?

*A.* Yes.

*Q.* When were theſe directions given?

*A.* Juſt before it ended.

*Q.* Do you mean before the ſentence of death was pronounced?

*A.* Yes; I believe it was, to the beſt of my knowledge.

*Q.* Before the ſentence was finiſhed, did you ſay any thing to Mr. O'Connor?

*A.* I did: I ſaid, "Mr. O'Connor, remember you are not to be diſcharged, though you may be acquitted." He ſaid, "Why?" and I ſaid, "Becauſe I have no authority to diſcharge you, and therefore you muſt not go."

*Q.* Was any thing ſaid after that to Mr. O'Connor by any body?

*A.* A perſon juſt below him, after ſentence was paſſed, ſaid to Mr. O'Connor, "You are acquitted; what do you ſtand there for? why don't you jump over?"

*Q.* You don't know who that perſon was, I ſuppoſe?

*A.* No; Mr. O'Connor ſaid, "Mr. Watſon ſays, I am not to go:" the gentleman below ſaid, "Pſhaw! you are acquitted; what do you ſtay there for? jump over." He inſtantly ſprung, and I inſtantly caught hold of the ſkirt of his coat as he got over, and held him; I then cried out, "Stop him, ſtop him!" There were ſome of them ſhoving him behind to ſhove him through the wicket, and others ſhoving him back; but he was ſo ſecured, that they got him back into his place again.

*Q.* Did you ſee Rivett?

*A.* I did.

*Q.* Did you give any directions to Rivett?

*A.* I called to him, or his companion, and ſaid, "I wiſh you would go out and get ſome conſtables and aſſiſtants;" for I ſuſpected there would be ſomething amiſs by and by.

*Thomas*

*Thomas Adams ſworn, examined by Mr. Fielding.*

*Q.* You were coachman to Mr. Juſtice Buller at the time of the trial?

*A.* I was.

*Q.* Tell my Lord, and the gentlemen of the Jury, what you obſerved in the Court after Mr. Juſtice Buller had paſſed ſentence of death upon O'Coigly? Firſt of all, where was your ſituation?

*A.* At the wicket-door that leads into the body of the Court, and that part of the Court that the ſpectators ſtand in.

*Q.* By the Jury-box?

*A.* Yes.

*Q.* Now, when ſentence of death was paſſed, what did you obſerve going forward in Court?

*A.* Some perſon ſaid, "Spring," but who, I know not; immediately Mr. O'Connor jumped over the bar into the body of the Court.

*Q.* Did you obſerve the perſon of the man from whom the voice came?

*A.* No, I did not; he came to the wicket-door, where I ſtood, and immediately caught him by the collar.

*Q.* Then he had made his eſcape ſo far as to get to the place where you were?

*A.* He had; I caught him by the collar of the coat, and ſays, "I'll be damned if I let you go;" and immediately the wicket-door was opened; I took the wicket-door in my left hand, and pulled it to, and bolted it; and the moment I had bolted it, ſome perſon knocked me down.

*Q.* Did you ſee that perſon afterwards, to know him.

*A.* My whole attention was to ſtop Mr. O'Connor.

*Q.* Then you don't know the perſon that knocked you down?

*A.* I do not; I immediately got up and ſeized Mr. O'Connor again, and ſaid, "I'll be damned if I let you go, let the conſequence be what it will."

*Q.* When you had recovered yourſelf, and caught him again, do you remember who were the perſons immediately about Mr. O'Connor?

*A.* I ſaw ſeveral gentlemen between the officers and Mr. O'Connor.

*Q.* Did you know any of them by name, as it appeared afterwards?

*A.* I ſaw my Lord Thanet; his Lordſhip was as cloſe to me as poſſible—rather behind me.

*Q.* How far was that ſituation, in which you ſaw Lord Thanet, from the immediate front of the bar from whence Mr. O'Connor had eſcaped?

*A.* He

*A.* He might be as far from the bar, not quite ſo far, as I am from you—rather nearer to the wicket, where I ſtood.

*Q.* Did you ſee Lord Thanet do any thing?

*A.* I ſaw Lord Thanet with a ſmall ſtick in his hand in this poſition, directly behind me; and Rivett, the officer, came up and ſtruck at him with a ſtick; Lord Thanet ſays, "What did you ſtrike me for? I did not ſtrike you." "You ſtruck me firſt," ſays Rivett.

*Q.* Did you know any of the other perſons that were by him?

*A.* I did not.

*Q.* Did you ſee any perſon there with a bald head?

*A.* I did not take any notice of a bald head; I ſaw a gentleman with a black collar and a pepper-and-ſalt coat on.

*Q.* What did that perſon do?

*A.* I did not ſee him do any thing; he was in the paſſage among the other perſons that were endeavouring to obſtruct the officers from taking Mr. O'Connor; I called out to ſome perſon to come forward to my aſſiſtance, for he made a ſpring, and the wicket-door was opened again; I made a ſpring and ſhut it again, and then Rivett and Fugion came up.

*Q.* How many perſons do you think there were between you and the officers Rivett and Fugion who were coming up?

*A.* I cannot ſay how many there were; there might be ſeven, eight, or nine; or there might not be quite ſo many.

*Q.* Do you know the perſons of either Mr. Thompſon, Mr. O'Brien, or Mr. Gunter Browne?

*A.* I do not.

*Q.* Do you know the perſon of Lord Thanet?

*A.* Yes, I believe I do know him; I ſaw his Lordſhip give his evidence in Court.

*Q.* When Mr. O'Connor was laſt ſtopped by you, what became of him?

*A.* I delivered him up to two officers.

*Q.* How near to the bar from whence he had eſcaped did you come with him?

*A.* I came quite up to the end of the bar with him.

*Q.* At that time, what was the number of the people ſtanding about?

*A.* They were directly oppoſing the officers from coming, when I was at the corner of the bar with him.

*Q.* Do you know the perſon of Mr. Ferguſſon?

*A.* I do not.

*Q.* Did you ſee any perſon in a bar wig and gown?

*A.* Yes.

*Q.* In what ſituation was he?

*A.* He was one of thoſe who wanted to obſtruct the officers from coming forward.

*Q.* What

*Q.* What did you obſerve him do?

*A.* I ſaw them ſtand all of a body together, ſo that the officers could not paſs to take him.

*Q.* Do you remember any complaint being made to the Judge, by any perſon, of having their head broke?

*A.* Yes; a gentleman ſaid, "What recompenſe am I to have? I have got a broken head;" but I do not know who it was.

*Q.* Was that the perſon that you ſpoke of with a black collar?

*A.* I cannot ſay.

*Q.* Had he a bald head?

*A.* I cannot ſay.

*Henry William Brooke ſworn, examined by Mr. Abbott.*

*Q.* I believe you have ſome ſituation in the Secretary of State's Office?

*A.* Chief Clerk in the Alien department.

*Q.* Was you at Maidſtone at the trials?

*A.* Yes.

*Q.* Do you know the perſon of Mr. Dennis O'Brien?

*A.* I do.

*Q.* Do you recollect ſeeing Mr. O'Brien in Court during the time the Jury retired to conſider of their verdict?

*A.* I do.

*Q.* Where did you ſee him? where was he?

*A.* I ſaw him near the dock, on the ſide where Mr. O'Connor ſtood.

*Q.* Was he in converſation with any perſon that you obſerved?

*A.* He was in converſation with Mr. O'Connor.

*Q.* Do you recollect what happened immediately after the Jury had pronounced their verdict?

*A.* I recollect that Rivett, one of the Bow-ſtreet officers, attempted to get up on the ſide where the jailor ſat.

*Q.* Did he declare the purpoſe of his attempting to go that way?

*A.* To the beſt of my recollection, he ſaid, "he had a warrant from the Secretary of State to arreſt Mr. O'Connor."

*Q.* Did you obſerve that any attempt was made to reſiſt this perſon who was endeavouring to come forward?

*A.* I obſerved ſome perſons endeavouring to pull him back.

*Q.* Do you recollect whether any direction was given to the jailor with reſpect to the priſoners, by either of the learned Judges?

*A.* Yes.

*Lord Kenyon*—It cannot be neceſſary to go into that.

*Mr.*

*Mr. Erſkine*—There can be no doubt of any of theſe facts.

*Mr. Abbott*—Did Mr. O'Connor do any thing?

*A.* Mr. O'Connor placed, as far as I recollect, his left hand upon the ſide of the bar where he ſtood, and leaped over.

*Q.* Did you hear any voices crying out any thing?

*A.* At that time the tumult became general: I heard ſome cry out, "Stop, ſtop;" and others, "Run, run."

*Q.* Are you able to identify any perſon who was reſiſting Rivett?

*A.* I ſaw a perſon, to the beſt of my recollection, who was dreſſed in a grey coat and a black collar, and his head was bald on the top.

*Q.* What did you ſee that perſon doing?

*A.* He ſeemed to have hold of the officer's coat,

*Q.* Of Rivett's coat?

*A.* Yes.

*Q.* Did you afterwards learn who that perſon was?

*A.* I afterwards underſtood that perſon to be a Captain Browne.

*Q.* Did that perſon, after the tumult was over, prefer any complaint to the Court, that you recollect?

*A.* I cannot identify the perſon of the gentleman that endeavoured to make a complaint to the Court of ill uſage; but there was ſome gentleman upon the table, who complained, whether generally, or to the Bench, I cannot ſay, "Am I to be ill-treated in this way?" or to that effect.

*Q.* Was that the perſon with a bald head and black collar?

*A.* I cannot ſay.

*Q. Did you know Mr. Ferguſſon the counſel?*

*A. I have not the honour of Mr. Ferguſſon's acquaintance; but I had his perſon pointed out to me as being Mr. Ferguſſon.*

*Q. Did you ſee him do any thing?*

*A. He appeared to have* SOMETHING *in his hand; but whether it was a ſtick, or a ſword that laid upon the table, or what, I cannot ſay—but he was brandiſhing it over the heads of the people.*

*Q.* Was he in his profeſſional dreſs at this time?

*A.* He was.

*Croſs-examined by Mr. Erſkine.*

*Q.* Where was Mr. Ferguſſon ſtanding when you apprehend, rather than expreſs, that you ſaw him brandiſhing ſomething which you do not deſcribe, but which you think was a ſtick or a ſword?

*A.* He was ſtanding near the ſide of the Court upon which Mr. O'Connor ſtood.

*Q.* Upon the ground, upon the bench, or upon the table?

*A.* He appeared to me, as far as I can charge my recollection,

to

to have been upon a bench; he appeared to be elevated from the ground.

*Q.* This was after the ſentence had been pronounced, and after Mr. O'Connor had gone out of the dock?

*A.* It was about that time, as far as I can recollect.

*Q.* At the time of the confuſion in Court, was it not?

*A.* It was at the time of the confuſion.

*John Stafford called again, examined by Mr. Law.*

*Q.* I will not examine you to the preliminary circumſtances which have been proved by ſeveral witneſſes. Confine yourſelf now to the time that Mr. O'Connor was endeavouring to get over the bar. At that period of time, did you ſee any of the defendants, and particularly Mr. Ferguſſon or Lord Thanet, do, or endeavour to do, any thing?

*A.* At the inſtant that Mr. O'Connor leaped over the bar, I ſaw my Lord Thanet and Mr. Ferguſſon: I had been paying particular attention to Mr. Juſtice Buller in paſſing ſentence; and the moment that he was done, I turned my eyes round to the bar, and ſaw Mr. O'Connor in the act of getting over; he had his left hand upon the bar, and his right hand extended: my Lord Thanet ſtood next to him, to the right of him; Mr. Ferguſſon, at that inſtant, was in front of him, with his back to me, facing Mr. O'Connor.

*Mr. Erſkine*—Where did you ſit at this time?

*A.* Suppoſing this to be the Court at Maidſtone, I ſat directly under the Jury.

*Mr. Law*—You ſat ſo that you could obſerve the whole of the tranſaction?

*A.* Clearly; but the whole of the tranſaction was of that ſudden nature, that I was riſing part of the time; I roſe, and ſeized one of the ſabres which laid upon the table, and which was a part of Mr. O'Connor's baggage.

*Q.* Did you ſee Lord Thanet or Mr. Ferguſſon do any thing in aid of Mr. O'Connor in the act of eſcaping?

A. *When Mr. O'Connor extended his arm, he either laid it upon Lord Thanet's ſhoulder, or Mr. Ferguſſon's arm; Lord Thanet being between me and Mr. Ferguſſon, I could not diſtinguiſh on which of them he put his hand.*

*Q. Did you ſee any obſtruction given by them to any perſons in paſſing from one part of the Court to the other?*

A. *I did not obſerve Lord Thanet make any obſtruction; Mr. Ferguſſon had his back turned to that ſide of the Court from whence the officers were endeavouring to approach to the bar.*

*Q.* With his back towards the great ſtreet of Maidſtone?

*A.* Yes. At the inſtant I am now ſpeaking of, I was upon the table.

*Q. Did*

*Q.* Several perſons appeared to be preſſing forward, and there ſeemed to be a ſcuffle?

*A.* Yes.

*Q.* You obſerved Lord Thanet very diſtinctly?

*A.* I had never ſeen Lord Thanet before that day—I ſaw him give his evidence—I ſaw him afterwards, I think, ſitting between Mr. Dallas and Mr. Ferguſſon; and I think I cannot err, when I ſay, I am ſure it was Lord Thanet.

*Q.* Did you not ſee diſtinctly the perſon you took to be Lord Thanet?

*A.* Moſt diſtinctly.

*Q.* How far was he from you?

*A.* I am ſure, not more than two yards; for the ſpace between the table and the bar is very ſmall; and it was between the table and the bar that I ſaw Lord Thanet.

*Q.* Where the Counſel ſat?

*A.* Not in the ſeat where the Counſel ſat.

*Q.* At this time you was upon the table, and ſaw Mr. Ferguſſon in the midſt of the confuſion; was he upon the table where you was, or in his place?

*A.* Neither upon the table, nor in his place.

*Q.* Where then?

*A.* Immediately behind where he had formerly ſat; he had ſat in the front of O'Connor, and he had got juſt behind the ſeat where he had ſat before.

*Q.* You had a ſword which you brandiſhed for the purpoſe of keeping off any danger that might happen?

*A.* Yes.

*Q.* Do you mean to repreſent that Mr. Ferguſſon was at that time in the Solicitors' box?

*A.* I don't know whether I can call it the Solicitors' box or not; *he ſat at the extremity of the ſeat wherein the Solicitors ſat*—he was certainly directly before me at the end of the trial.

*Q.* At that time, was not Mr. Ferguſſon ſurrounded by a great number of people, who were puſhing and ſhoving, and making a diſturbance?

*A.* The perſons behind him were certainly crowding upon him; but there was a ſmall ſpace before him that was vacant.

*Q.* Was there not a preſſing upon him every way?

*A.* No, not from the table.

*Q.* Were there not perſons in the place where the Solicitors' box was, puſhing and crowding at the time Mr. Ferguſſon extended his arms?

*A.* Certainly; but I ſaw him only preſſed on the ſide that I deſcribe.

*Q.* Do you mean to ſwear that you ſaw Mr. Ferguſſon ſhift his place where he had been, and go nearer to Mr. O'Connor?

*A.* No, I did not ſee him ſhift it.

Mr.

*Mr. Garrow*—There was a low-backed ſeat for the counſel for the priſoners?

*A.* Yes.

*Q.* Behind that was a ſpace and bench for the ſolicitors?

*A.* Yes.

*Q.* And if I underſtand you right, Mr. Ferguſſon appeared to you to be over that low back to the counſels' ſeat?

*A.* Yes, certainly ſo.

*Q.* Between the back of the counſels' ſeat and the bar?

*A.* Yes; I had not immediately before this obſerved where Mr. Ferguſſon was.

*The Honourable Robert Clifford ſworn, examined by Mr. Garrow.*

*Q.* I ſhall not trouble the Court to hear from you over again the detail of the circumſtances. Did you hear Lord Thanet examined as a witneſs upon the trial of Mr. O'Connor?

*A.* I did; it was a few minutes before five.

*Q.* Very ſoon after that, I believe, Mr. Dallas ſummed up on the part of the priſoner?

*A.* He began to ſum up, I believe, about five.

*Q.* Did you obſerve where Lord Thanet ſat while Mr. Dallas was ſpeaking?

*A.* Mr. Dallas left his place, which was exactly oppoſite Mr. Juſtice Buller, and Lord Thanet came and ſat in Mr. Dallas's place.

*Q.* Mr. Dallas had removed from the place where he had ſat, to a more convenient place for addreſſing the Jury?

*A.* Yes; to the left hand of the counſel for the Crown; Lord Thanet ſat oppoſite Mr. Juſtice Buller; the attornies' bench was between the priſoner and Lord Thanet.

*Q.* Did you, at any time after that, ſee Lord Thanet move from that place, Mr. Dallas's ſeat, to any other?

*A.* He went over the back of the ſeat, and went into the attornies' place.

*Q.* To that ſeat which was immediately under the bar?

*A.* Exactly: I do not know whether it was the firſt or ſecond ſeat; there are two ſeats, one ſeat is directly againſt the wood, and then there is the thickneſs of a man: I do not know which of them he was upon.

*Q.* When the Jury returned, and had given their verdict, what obſervations did you make reſpecting either Lord Thanet, Mr. Ferguſſon, Mr. O'Brien, Mr. Thompſon, or Mr. Browne?

*A.* When they had returned a verdict of Guilty againſt O'Coigly, I obſerved Mr. O'Connor put his left leg over the bar of the dock, I believe they call it, leaning upon his left hand; Lord Thanet roſe up, and Mr. O'Connor's hand was within this diſtance (ſix or ſeven inches) of Lord Thanet's

left ſhoulder—it was below his head: I did not ſee it touch his ſhoulder, becauſe Mr. Ferguſſon roſe up, and was exactly between Lord Thanet and myſelf.

*Mr. Erſkine*—Where did you ſit?

*A.* I ſat as Marſhal under the jury-box.

Mr. Garrow—*Be ſo good as deſcribe that riſing of Mr. Ferguſſon's?*

A. *They ran off all together—they followed Mr. O'Connor, as it appeared to me—I bent myſelf as far as I could to ſee, when ſo many people came jumping from the witneſs-box, that I was almoſt overpowered.*

*Q.* The witneſs-box was oppoſite the jury-box?

*A.* Yes; and they all went off to the left hand, behind the cryer's box.

*Lord Kenyon*—Do you mean that they all ran off together?

A. *Mr. Ferguſſon, and the reſt of them, went off towards the narrow ſtreet of Maidſtone.*

*Mr. Garrow*—There you loſt ſight of them, on account of the number of perſons that came to intercept your view?

*A.* I was ſitting here, and they all went there.

*Q.* Did you ſee any thing more of the conduct of Lord Thanet?

*A.* I ſaw no more of them after that; I ſaw a gentleman, that was almoſt bald, come and complain that he had received a blow upon his head, and aſked, "whether there was no redreſs for the blow he had received?"

*Q.* Did you learn afterwards that that was Mr. Gunter Browne?

*A.* I underſtood his name was Browne.

*Q.* Did you ſee him favouring the eſcape of O'Connor?

*A.* No.

*Q.* Did you ſee Mr. O'Brien do any thing?

*A.* I ſaw a perſon in a grey coat hanging his left arm over the jury-box for ſome time, afterwards came down, and was ſeated on the right of Mr. O'Connor, upon the bar that was there. Juſt before Mr. O'Connor made his eſcape, that perſon diſappeared from that place, and I ſaw no more of him.

*Thomas Wagſtaffe ſworn, examined by Mr. Adam.*

*Q.* You are a King's meſſenger?

*A.* Yes.

*Q.* You went to Maidſtone, in May laſt, with a warrant to apprehend Mr. O'Connor?

*A.* Yes.

*Q.* Did you go into the Court with Fugion and Rivett for that purpoſe?

*A.* No; Fugion and Rivett were in the Court before I went in, and I went in to them.

*Q.* Do

*Q.* Do you remember any gentleman coming and aſking you any queſtions about your warrant?

*A.* Yes; a gentleman came and aſked, "If I had a warrant, or any thing; againſt Mr. O'Connor?" I told him, "No."

*Q.* Did any other gentleman come to you?

*A.* No.

*Q.* Do you know who that gentleman was?

*A.* No: I underſtood afterwards it was Mr. O'Brien.

*Q.* Did any thing further paſs between you and Mr. O'Brien at that time?

*A.* He offered to bet ſome money with Fugion and Rivett.

*Q.* Did any thing more paſs?

*A.* No.

*Q.* Had you your eſcutcheon as meſſenger on?

*A.* No.

*William Cutbuſh ſworn, examined by Mr. Garrow.*

*Q.* I believe you are a clock-maker at Maidſtone?

*A.* Yes.

*Q.* Was you in Court at Maidſtone when ſentence of death was paſſed upon a priſoner of the name of O'Coigly?

*A.* Yes, I was.

*Q.* Upon that occaſion, did you ſee Mr. O'Connor do any thing?

*A.* Yes; I ſaw him get over the bar.

*Q.* At that time did you ſee Lord Thanet? and if you did, what did you ſee him do?

*A.* After that, I ſaw a man with a ſword in his hand beating over a gentleman's head.

*Q.* The Court have been ſitting many hours, and have heard the general detail of the tranſaction; be ſo good as anſwer my queſtions—Did you ſee Lord Thanet?

*A.* I did.

*Q.* Did you ſee his Lordſhip do any thing, and what?

*A.* I ſaw Rivett ſtrike Lord Thanet over the back—I did not know it was Rivett at that time—I knew Lord Thanet very well.

*Q.* Where was Lord Thanet at the time that Rivett ſtruck him?

*A.* Two or three yards from Mr. O'Connor, or thereaway.

*Q.* Was Lord Thanet nearer to the great ſtreet of Maidſtone, than he was to Mr. O'Connor, or to the narrow ſtreet?

*A.* They were all on the left ſide.

*Q.* You was on the ſide on which Mr. O'Connor was endeavouring to get out?

*A.* Yes.

*Q.* What was the firſt thing you ſaw?

*A.* I

*A.* I ſaw nothing till I ſaw the ſword hit upon Lord Thanet's back.

*Q.* That was not Rivett?

*A.* Yes, it was he hit Lord Thanet upon the back with a ſword—I did not know it was Rivett till afterwards.

*Q.* Were any of the lights put out?

*A.* One.

*Q.* Did you hear any expreſſion about putting out the lights?

*A.* Yes; I heard ſome perſon ſay, "Put out the lights."

——— *Omrod ſworn, examined by Mr. Adam.*

*Q.* I have but one queſtion to aſk of you—Did you ſee any body, at the time of the pronouncing of the verdict at Maidſtone, in the caſe of O'Coigly and O'Connor, lay hold of Rivett, or any of the officers?

*A.* Yes; Rivett, Fugion, Wagſtaffe, and I, were ſtanding together; they wanted to croſs the Court where Mr. O'Connor was.

*Q.* What was done to Rivett?

*A.* Two gentlemen in black got up and oppoſed him very much; I ſaid to one of them, "You muſt not obſtruct this man; he is an officer of juſtice."

*Robert Parker ſworn, examined by Mr. Garrow.*

*Q.* Was you in Court at Maidſtone when the Jury returned into Court with their verdict, in the caſe of O'Connor and others?

*A.* Yes.

*Q.* Were you near the under-ſheriff?

*A.* I was very near—behind him.

*Q.* Neareſt the great ſtreet of Maidſtone, and far from O'Connor.

*A.* Yes,

*Q.* Did you ſee any thing happen upon that verdict being brought in?

*A.* Upon the verdict being brought in, he put his leg over the bar, feeling himſelf diſcharged, as he afterwards explained; a Bow-ſtreet officer then ſtepped up, and ſaid, "There was a warrant to detain him;" Mr. O'Connor then put his leg back again, and ſaid, "He thought he was diſcharged;" and one of the Judges ſaid, "He was not to be diſcharged," or ſomething of that ſort; and he was quiet till ſentence was over.

*Q.* Did you ſee Lord Thanet?

*A.* Yes; I ſaw him on a ſeat at the front of the bar—I am perfectly ſure I ſaw Lord Thanet.

*Q.* After ſentence had paſſed, did you ſee the Bow-ſtreet officers make any attempt to paſs the bar where Mr. O'Connor ſtood?

*A.* Mr.

*A.* Mr. O'Connor jumped over the bar, and then the Bow-ſtreet officers both advanced in order to ſtop Mr. O'Connor; the jailor called out, "My Lord, am I to let him go?" or ſomething to that effect, and there was a contention; ſeveral perſons were aſſiſting Mr. O'Connor to get out at the oppoſite door, and the Bow-ſtreet officers were attempting to ſtop him.

*Q. Did you at that time ſee Lord Thanet?*

A. *I did.*

*Q. In what ſituation? and what was he doing?*

A. *Lord Thanet evidently appeared to me to be obſtructing the officers in their attempt to ſtop Mr. O'Connor.*

*Q.* Did you ſee any other perſon engaged in the ſame attempt?

*A.* Not any one whoſe perſon I then knew.

*Q.* Did you obſerve any perſon whoſe dreſs was remarkable?

*A.* I ſaw a gentleman in a bar gown and wig endeavouring to aſſiſt the eſcape of O'Connor; but at that time I did not know the perſon of the gentleman.

*Q.* Do you ſince know who that gentleman was?

*A.* I only know by report.

*Q.* Did you ſee any other perſon in a gown and wig acting as you have deſcribed?

*A.* No, I did not.

*Q.* Had you been in Court during any conſiderable portion of the trial?

*A.* No, very little; I had been in, for five minutes at a time, perhaps three times during the trial.

*Q.* So that you had not an opportunity of obſerving that gentleman in the courſe of his profeſſional duty?

*A.* No.

*Croſs-examined by Mr. Gibbs.*

*Q.* You ſay Lord Thanet appeared to you to be obſtructing the officers; did you ſee him do any thing?

*A.* I ſaw him reſiſting with his hands.

*Q.* Pray, when was this?—before or after the ſentence?

*A.* It began immediately after the ſentence; it began upon Mr. O'Connor getting over the bar.

*Q.* What did he do with his hands?

*A.* The Bow-ſtreet officers puſhed forward; and againſt one of them it was that he was making reſiſtance.

*Q.* Pray, which of them?

*A.* I cannot tell—I do not know which—I did not know either of them.

*Q.* Did you ſee the warrant?

*A.* Yes; I ſaw it handed over to be read.

*Q.* Can you tell whether it was againſt either of thoſe two men, or againſt the meſſenger, that he was making that reſiſtance?

*A.* I cannot.



*Q.* But

*Q.* But you ſaw him put his hand againſt one man that was coming forward?

*A.* Yes, certainly.

*Q.* You ſaid that you ſaw a gentleman in a bar gown that appeared to aſſiſt O'Connor?

*A.* Yes.

*Q.* What did you ſee him do?

*A.* I recollect that gentleman was ranged with the Counſel for the priſoners; and then he turned round with his face to the bar, and was in that manner contending to reſiſt their advancing towards the priſoner.

*Q.* He was ſtanding upon the ground, and reaching over?

*A.* Yes.

*Q.* Standing, as I may be ſtanding now, ſuppoſing this to be the bar?

*A.* Yes: ſuppoſing you was turned round, it would be exactly ſo—he turned round towards the bar.

*End of the Evidence for the Crown.*

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## *THE HONOURABLE THOMAS ERSKINE.*

GENTLEMEN OF THE JURY,

IT now becomes my duty to addreſs you—but for three of the Defendants only: because, though nothing could poſſibly have ſeparated their caſes in argument, yet it was thought prudent not to embarraſs the mind of any one advocate with ſo many facts and circumſtances as the defence of all of them might eventually have involved. My Learned Friends who ſit behind me, were, therefore, to have defended the other two Gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought adviſable by the Court that they ſhould now be acquitted, leſt their teſtimony ſhould become material hereafter for thoſe who remain under trial.

Several obſervations were made by the Attorney-General, in his ſhort and diſpaſſionate addreſs to you, well worthy of your attention. He told you, that he could not conceive a greater offence againſt the juſtice of any country, nor indeed againſt the very character of Juſtice itſelf, than an attempt to confound and overbear its Judges and Miniſters in the adminiſtration of Law.

Law. I admit it freely. The undiſturbed and unruffled courſe of Juſtice is the univerſal ſource of human ſecurity. Stateſmen have, in all ages, diſtracted Governments by their ambition: parties will always create animoſities, and ſometimes confuſion, by their diſcordant intereſts; tumults will occaſionally ariſe out of the beſt of human paſſions, in the beſt-ordered States: but where an enlightened and faithful adminiſtration of juſtice exiſts in any country, that country may be ſaid to be ſecure.

It has pleaſed God to give us a long reign of that ſecurity in England. Indeed, if I were to be aſked what it is which peculiarly diſtinguiſhes this nation from the other nations of the world, I ſhould say that it is in her Courts ſhe ſits above them; that it is to her judicial ſyſtem ſhe owes the ſtability of all her other inſtitutions: her inhabitants have for ages lived contented under her laws, becauſe they have lived in ſafety.

Gentlemen, the Attorney-General had certainly no occaſion to enter into any explanation of his own conduct in the courſe of this proſecution: it was never my purpoſe to impeach it. The queſtion is not, whether he is juſtified in having arraigned the Defendants? but, whether, upon the whole evidence, they are guilty, or not guilty? I ſay, upon the *whole* evidence; becauſe, to ſecure myſelf an impartial hearing, I think it my duty to tell you, in this early part of my addreſs to you, that I mean to call witneſſes in their defence. You have heard attentively the accuſing teſtimony: AUDI ALTERAM PARTEM. It is not two days ago that, in a ſimilar ſtage of an important trial, the Noble Judge upon the Bench took occaſion to remark to a Jury, that this was ſo ſacred a maxim of Juſtice, that we were frequently reminded of it by ſeeing it inſcribed upon the very walls of our Courts.

It has been alſo truly obſerved to you (as the obſervation applies to the firſt of the Defendants upon the Record, my noble friend and client, Sackville, Earl of Thanet), that the charge againſt him is of a moſt deep and ſerious complexion. I think ſo too. He is a man of illuſtrious rank—a hereditary Judge and Legiſlator of the kingdom; and a judgment, therefore, againſt *him*, is of far greater conſequence than to a mere private man. It is a great impeachment of ſuch a perſon, that he infringes the Conſtitution of his country, of which he is a dignified guardian; that he diſturbs the execution of thoſe laws of which he is a high magiſtrate; and that, forgetting the duty annexed to his exalted ſtation, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the ſanctuary of Juſtice with miſrule and violence.—Mr. Ferguſſon, though inferior in rank to the Noble Earl, ſtands eventually in a ſituation, perhaps, of ſtill greater delicacy, and is involved in deeper conſequences. The ſon of a late eminent Lawyer in the other part of the Iſland, who

filled

filled alſo a high ſituation in its magiſtracy ;—himſelf bred to the Engliſh bar ; not as a faſhionable branch of education, or as an uſeful introduction into life ; but engaged in it learnedly, honourably, and ſucceſsfully, as a profeſſion, and as a profeſſion by which he muſt live :—a young man, ſo circumſtanced, has ſurely a moſt ſerious claim to your attention, and even to the moſt indulgent conſideration. As to the other Gentlemen, I need hardly ſpeak of them : becauſe, though their names have of courſe been reiterated in the queſtions put to the witneſſes, nothing approaching to criminal conduct has been eſtabliſhed againſt them. We are here, therefore, upon a mere queſtion of fact. You cannot but have obſerved, that the Attorney-General and myſelf, inſtead of maintaining oppoſite doctrines, perfectly agree upon the principles which ought to govern your deciſion. The ſingle object of inquiry is, the truth of this Record. Is the charge proved to your ſatisfaction ? or, rather, *will* it be ſo proved when the *whole* cauſe has been heard ? In adverting to what the charge is, I need not have recourſe to the abſtract I had made of the Information. The ſubſtance and common ſenſe of it is this :—that Mr. Arthur O'Connor had been brought, by legal proceſs, into the cuſtody of the Sheriff of Kent ; that a Special Commiſſion had aſſembled at Maidſtone, to try *him* and others for High Treaſon ; that, upon the opening of the Commiſſion, he had again been committed by the Court to the ſame cuſtody ; that he was afterwards again brought up to the bar, and found not guilty ; and that, after he was ſo acquitted, but before he was in *ſtrict form* diſcharged by the order of the Court, the Defendants conſpired together, and attempted to reſcue him. This is the eſſence of the charge : —the diſturbance of the Court, and the aſſaults ſtated in the different counts of the Information, are only the overt acts charged to have been done, in purſuance of this purpoſe, to reſcue the priſoner. The *criminal purpoſe* to reſcue Mr. O'Connor, is the fact, therefore, of which you muſt be convinced, to juſtify the verdict which the Crown has called upon you to pronounce.

Before I proceed to addreſs myſelf to you upon the evidence, I will do that which muſt make it manifeſt that it is not my wiſh to confound your underſtandings in the inveſtigation of facts ; for I will begin by relieving your attentions from the conſideration of all circumſtances that are neither diſputed, nor fairly diſputable, either as they are the reſult of what you have heard already, or as I think they muſt remain when the whole caſe is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the Jury in his favour, was diſpoſed to leave the Court. The preſumption, indeed, as it ariſes out of univerſal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of Not Guilty

Guilty entitled him to do ſo. Neither can it be diſputed that a warrant did in fact exiſt, and that its exiſtence was known; ſince it appears that the officers stated in open Court that they had one: And it is not material for me to diſpute, nor is it, perhaps, diſputable, that Mr. O'Connor knew of their intention to arreſt him; and, if he did know it, human nature is ſtronger than all the evidence in the world to convince every man of his diſpoſition at leaſt to eſcape from it: and I admit further, that a moſt honourable perſon, who gave his evidence with a candour which reflects high honour on his character, has added a circumſtance which, though it could not be ſtrictly received as proof, may be true, for any thing that touches the merits of the caſe, *viz.* that there had been a communication to the Court that there were diſaffected perſons diſpoſed to reſcue the priſoner.

Having admitted theſe facts, I, in my turn, have a right to bring to your recollection, that it is an indiſputable fact, reſting upon the whole of the Crown's evidence, that the officers, ſtrongly impreſſed with this idea, ruſhed ſuddenly and impetuouſly forward, on Mr. O'Connor's ſtepping over the bar when the verdict of Not Guilty was delivered: and indeed Rivett, upon his croſs-examination, diſtinctly admitted, that owing to the apprehenſion of a reſcue, he ruſhed into Court with more precipitation than, under other circumſtances, he could have juſtified; and that a great buſtle and confuſion exiſted before he approached any of the Defendants, or even ſaw their perſons. This admitted origin of the diſturbance removes all difficulties from the conſideration of the cauſe; and Mr. Juſtice Heath declared, that there was a ſcene of confuſion and violence in Court, ſuch as he had never ſeen, nor could poſſibly have expected to ſee, in a Court of Juſtice; and the ſingle queſtion, therefore, is, what ſhare the Defendants had in it? Did the diſturbance ariſe from any original acts of their's? or were they, on the contrary, firſt preſſed upon by the officers and their aſſiſtants, who, though they might be engaged in what they miſtakenly ſuppoſed to be their duty, from an expectation of reſiſtance, neceſſarily created confuſion by their forcible entry into a crowded Court? Were the Defendants engaged in any conſpiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only queſtion; becauſe, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at preſent, are perfectly conſiſtent with the conduct of gentlemen ſuddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by thoſe who created it.

The natural courſe of conſidering which of theſe propoſitions ought to be adopted by reaſonable men, is to ſet out with tracing a motive. There can be no offence, without ſome cor-

ſponding inducement to commit it. It is not alledged that theſe Gentlemen ignorantly or wantonly inſulted the Court—an indiſcretion which can only happen amongſt the loweſt orders of the people: the charge upon them is a *deliberate* and *pre-exiſting* combination to deliver Mr. O'Connor, by confuſion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the reſult of ſuch a conſpiracy.

Now, I have always underſtood it to be the great office of a Court of Juſtice, when evidence is to be oppoſed to evidence, to conſider the probabilities of the tranſaction; indeed, a judicial deciſion is nothing elſe but the bringing up facts to the ſtandard of reaſon and experience. I have already deſcribed the ſituations of the only two Defendants whoſe caſes you can have occaſion to conſider;—the one, as a high Peer and Magiſtrate of the Kingdom, with the natural conſciouſneſs of the duties inſeparable from exalted ſtations; the other, ſtanding in a manner for his very exiſtence upon the dignity and decency of his deportment in the Courts, which habit, as well as principle, had taught him to reverence and reſpect. Yet the charge upon ſuch perſons is, that open undiſguiſed acts of violence were committed by them, in a place which the Attorney-General has, with great propriety, aſſimilated to the place where we now ſit—becauſe nothing more forcibly aſſiſts the judgment than by bringing the ſcene under the immediate notice of the ſenſes; and I am, beſides, ſpeaking to Gentlemen of the county of Kent, who muſt themſelves know the place without the aid of this compariſon, though you cannot know it better than I do. I have ſpent many laborious hours of my life in the Court at Maidſtone; though the labour was always rendered delightful by the reflection that I never had to plead in vain, before Gentlemen of your deſcription, the cauſe of innocence or truth. The Attorney-General, then, has aſſimilated the Court of Maidſtone to this Court—He ſays, that the priſoner ſat where my Learned Friends now ſit behind me; that the bench of the Solicitors, where the confuſion began, cannot be better deſcribed than by the place occupied by the King's Counſel now ſitting around me; the ſeat of the Counſel may be conſidered to be placed where theſe Gentlemen are now ſitting before me; and the vacancy in the middle, between the bench and me at this moment, muſt be ſupplied by the table of which we have heard ſo much; whilſt the Judges *there* muſt be conſidered to be placed as they are *here*, elevated in ſituation as in rank, and commanding the moſt diſtinct and immediate view of every part of the Court. Under theſe circumſtances, you are aſked to believe that Lord Thanet and Mr. Ferguſſon—the one poſſeſſed of a large hereditary fortune in Kent, and who could not but know

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that his perſon was as well known to every man in Maidſtone as St. Paul's Church to the inhabitants of Ludgate-Hill—the other ſtanding upon a table within ſix yards of the Judges, in the robes of his profeſſion, cloſe by a large chandelier, deſcribed at that time by all the witneſſes to have been fully lighted;—you are deſired, I ſay, to believe, that theſe two perſons, *without any motive upon earth brought home to them by any part of the evidence*, engaged publicly in a ſcene of audacious riot and violence, in the public face of the moſt dignified Court; in the preſence of all its numerous Officers; of an acute and intelligent Bar; of the Sheriff and all his train; of a Jury compoſed of the principal Gentlemen of the county; and of all that concourſe of attendants upon an important State proſecution which either duty or curioſity had collected. I maintain that the hiſtory of the world does not furniſh an example of ſuch a total departure from every principle of human action, and from all common ſenſe and prudence, in the commiſſion of a crime. The intereſt of the parties to commit it appears to be nothing—the project utterly impracticable—detection abſolutely certain—the reproach, to men of character, ſevere and inevitable—the legal puniſhment, not leſs ſo; and all thoſe conſequences notorious to men of the meaneſt and moſt uncultivated underſtandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating theſe abſurdities: but they are too important to be thus run over; they muſt be viewed ſeparately, to have their proper effect.

Firſt, then, let us ſearch for a motive ſtrong enough to impel honourable men to encounter ſuch deſperate difficulties, in the purſuit of a diſhonourable, uſeleſs, and impracticable purpoſe. Have you any evidence, have you the ſuggeſtion, have you even the inſinuation of Counſel, that the Defendants ought to be claſſed amongſt thoſe evil-diſpoſed perſons (if any ſuch exiſted) whom Mr. Juſtice Heath took notice of, but upon report only, as attendant on the trial? The Noble Earl came down, under the proceſs of a ſubpœna, to give evidence for the priſoner; not even of any fact connected with his conduct, but merely to ſtate what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourſe with the world. But why ſhould I ſeek by obſervation to remove the imputation of a motive correſponding with the miſconduct which is imputed, when it is but common juſtice to the Attorney-General to admit that he did not even attempt to inſinuate any thing of the ſort? Yet my Noble Friend remains as a criminal before you, charged with the violation of that which is the moſt ſacred in civil ſociety, branded with the reſiſtance of authorities the moſt dignified and important, in order

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that a perſon ſuppoſed to be an object of high ſuſpicion by the Government of the Country, might be left at liberty to perpetrate the treaſons which the Duke of Portland's warrant had for its object to defeat—treaſons which, if ſucceſsfully perpetrated, were, in their moſt direct and obvious conſequences, to ſtrip the Noble Earl of all the ſplendid inheritance of rank and property deſcended to him from his anceſtors through ſo many generations. Mr. Ferguſſon will forgive me if I ſay, that the principal property which he can die poſſeſſed of, muſt be the fruits of a profeſſion which the ſame treaſons were pointed to deſtroy; yet he, too, muſt be believed, *without a ſhadow of evidence, or even the ſuggeſtion of his accuſers*, to have engaged in the deſperate effort of affording ſhelter and opportunity for treaſons which were to diſſolve the Courts in which he practiſes, to deſtroy that ſyſtem of Law which he has been bred to underſtand, and to ſet up, inſtead of it, a new order of things, by which he muſt deſcend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undiſciplined competitors.

But, it ſeems, they were not indifferent to the deliverance of Mr. O'Connor; for, upon his acquittal, they haſtened to the bar, and congratulated him on the verdict. They certainly did ſo, in common with many others; and although the impulſe of perſonal kindneſs which directed them was honourable, it may be ſet down, not ſo much to the individuals, as to the characteriſtic benevolence of Engliſhmen. The characteriſtics of nations depend more upon their hiſtories and their governments, than upon the temperaments of men ariſing from natural cauſes. The Engliſh Conſtitution was always, in *theory*, a Conſtitution of Freedom; but it only became ſo in practice by the numerous and finally ſucceſsful ſtruggles of our free and virtuous anceſtors againſt oppreſſive abuſes of authority. Many eminent perſons to whom this Country is indebted for her Liberties, having ſtood upon their trials, and having obtained deliverances from the Tribunals of Juſtice, has gradually produced a general ſympathy in the minds of Engliſhmen, when men are ſtanding for life or for death before their country. This is an almoſt univerſal, and peculiarly characteriſtic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice; but pervades all the claſſes of ſociety. It is compounded of a principle of humanity, of a ſpirit of national pride and dignity in the freedom of our inſtitutions, and of a ſenſe of ſecurity derived from them. No reaſoning, therefore, can be more falſe, than that, when men are accuſed, and even upon pregnant evidence, of conſpiracies againſt the Government, that they who ſeem to feel an intereſt in their deliverance are alienated in their affections to the State. Engliſhmen of all deſcriptions receive their

their ſenſe of innocence from their Country's verdict; and they feel a ſort of ſatisfaction which, I verily believe, exiſts in no other country. Irreligion and falſe liberty have been ſeen to delight in blood, to rejoice in revengeful ſacrifices, to think it muſic to hear the agonizing groans of expiring ſufferers, and a ſpectacle of triumph and pleaſure to gaze upon their mutilated bodies; but the ſenſe of liberty in a country long humanized by the influence of a free government, ſhrinks back even from the conſequences of the juſteſt proſecutions, looks with an eye of tenderneſs upon the accuſed even before the conſcience is convinced of innocence, and feels an invincible impulſe of pleaſure in the legal deliverance from guilt. Long, long, may this remain the characteriſtic feature of our Country!—When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conſpiracy to reſcue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the Jury, but which the evidence on the trial, and the Judges' remarks on it, had previouſly and diſtinctly anticipated? The queſtion, therefore, again recurs—Were the Defendants the active authors of the reſcue, for the purpoſe charged in the Indictment? The MOTIVE is gone already—not only as wholly unaſcribable from the total abſence of evidence, but becauſe my Learned Friend who laid the caſe before you was too much a man of honour (as I have already done him the juſtice to acknowledge) to aſcribe, or even to inſinuate, a motive which he knew did not exiſt, and which he had neither evidence nor reaſonable preſumption to ſupport.

If, however, a criminal act, tho' without the proof, or even the imputation of a referable principle of action, may ſtill be believed by a Jury diſpenſing the mild and rational juſtice of this country; the next conſideration, in weighing the probabilities, is, how this purpoſe, ſuppoſing it ſtill to exiſt, without any correſponding intereſt, was poſſibly to be accompliſhed?—for men cannot be preſumed to engage in the moſt perilous enterpriſes, not only without inducement, but without even a ſhadow of hope or proſpect that their object is practicable. The ſituation of the Court is not only preſent to your own recollections from your perfect acquaintance with it, but is brought before your eyes by its juſt compariſon with this. Mr. O'Connor ſtood at the bar where my Learned Friends now ſit, ſurrounded by hundreds of perſons not attempted to be implicated in any deſign to favour his eſcape: on the right, and on the left, and behind, were the public ſtreets of Maidſtone, from whence no paſſage without obſervation was to be expected; and before they could even be approached, an outlet muſt firſt have been made through groves of javelins in the hands of thoſe numerous officers which the exemplary attention of the Sheriffs of

Kent

Kent have always provided for the ſecurity and dignity of the Court. It was, therefore, not merely improbable, but *naturally impoſſible*, to deliver, or even hope to deliver, a priſoner from the public bar of ſuch a Court, in the view of all its Judges, its Counſel and attendants, without the ſupport of great force and numbers, and without, likewiſe, a previous concert and combination to direct them with effect.—The next conſideration, therefore, which directly follows theſe immutable principles of judgment, is the fact as it applies to them—Was there either FORCE exerted, or NUMBERS collected, or MEASURES CONCERTED? The Defendants cannot be made reſponſible for any act of violence which might be committed by any diſorderly perſons in the ſtreet. It is nothing to them, that Mr. Juſtice Buller's ſervant was knocked down in one of the avenues of the Court, whilſt they were admitted to have been in its centre. What act of diſorder or violence do you find committed by Lord Thanet, by Mr. Ferguſſon, by Mr. O'Bryen—or by Mr. Gunter Browne, who has been made a defendant only becauſe, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in Court at all, except as he was ſeen complaining to the Judges of an aſſault committed on himſelf. Lord Thanet is a man of high ſpirit, and of a ſtrong body: it muſt have been a warm intereſt, as I have repeatedly obſerved to you, that could have embarked him at all in ſuch a buſineſs; and, when embarked in it, he muſt reaſonably be ſuppoſed to have engaged with activity in the accompliſhment of an object for which he riſked ſo much: yet it has appeared already, by the teſtimony of one of the moſt reſpectable and the moſt correct of all the witneſſes for the Crown, and it will be made manifeſt hereafter beyond all doubt or queſtion, that, at the very moment (and it was but a moment) when the evidence has the remoteſt application to any of the Defendants, he lay back inactively, holding his ſtick with both hands acroſs his body, to defend himſelf from the aſſaults of only one man, not ſtronger than himſelf, and whoſe blows he neither attempted to return, nor invited the aid of others to repel; ſo far from it, that Mr. Ferguſſon, who is ſuppoſed to have put his character and ſituation to ſo much hazard, though he ſtood cloſe by, is not even charged with having exerted his ſtrength on the occaſion, but to have contented himſelf with flouriſhing a ſmall ſtick in his hand without ſtriking or aiming at any body—a circumſtance neither true, nor poſſibly conſiſtent with the truth of the deſigns which are imputed to him; and no act of violence, or even geſture to incite it, is imputed to any other perſon near this ſuppoſed focus of confuſion, at the only time when Lord Thanet and Mr. Ferguſſon are affected even by the ſolitary evidence of Rivett. So much for the force exerted

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in the purſuit of a purpoſe which no force proceeding from a few perſons could have accompliſhed: and as to any previous concert or combination amongſt numbers which can poſſibly involve them, it is rendered abſolutely incredible by the whole body of the evidence; for the Attorney-General has proved that there were attendant on Court a great number of gentlemen known to profeſs the ſame principles and opinions with the Defendants, and moſt intimately acquainted with Lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment aſſembled by the juſt anxiety of friendſhip and affection; yet it is not imputed to any of thoſe numbers I allude to, though all preſent in Court, and within reach of whatever was tranſacted in it, that they took any part, directly or indirectly, by force, by ſpeech, or by ſeeming encouragement, in the ſcene of diſorder which took place. If Lord Thanet, then, is a conſpirator, with whom did he conſpire? ſince, with the exception of the four other Defendants, three of whom muſt be acquitted for want of evidence, accuſation itſelf does not even attempt to implicate one man of his numerous friends and acquaintance, who muſt naturally be ſuppoſed to have been impreſſed with ſimilar feelings, nor indeed any one man, high or low, whom he can be proved to have ever ſpoken to, or ſeen, in the whole courſe of his exiſtence; and if obſcure and unknown perſons are to be taken to have been inſtruments in this confuſion, there muſt have been ſome evidence of direction or encouragement to others proceeding from the Defendants, which is not attempted to be ſworn by any of the witneſſes. This moſt important part of the caſe ſhall not, however, be left upon the failure of evidence, or even upon the abſence of accuſation: for I will call many of theſe gentlemen, who will tell you that they were wholly ignorant of any deſign to reſcue the priſoner—that they ſaw no confuſion or riot, except that which the precipitate entry of the officers occaſioned; and who, by tracing the Defendants in their eyes through the whole of the period in queſtion, will be able poſitively to contradict the moſt material parts of the evidence which perſonally affects them.

Gentlemen, the next queſtion upon the ſcore of probability is this—Suppoſing that, contrary to every thing either proved or aſſerted, the Defendants *had* felt an intereſt in the eſcape of Mr. O'Connor, and *had* conceived it to be *practicable*, could they poſſibly have hoped to eſcape detection—more eſpecially Lord Thanet and Mr. Ferguſſon, whoſe perſons were ſo notorious—the one, from his high rank and reſidence in the county whoſe principal inhabitants ſurrounded him; and the other, from being in his profeſſional dreſs, in the place aſſigned to him as Counſel on the trial, and, in the very midſt of his companions, engaged in the buſineſs of the Court? Theſe

gentlemen,

gentlemen, therefore, upon the Attorney-General's own admiſſion, who has juſtly aſſimilated the Court at Maidſtone to the one we are now aſſembled in, could no more have hoped to eſcape immediate detection and puniſhment for the riot they are ſuppoſed to have engaged in, than I could hope to eſcape from them, if, taking a ſtrong intereſt, as I muſt be ſuppoſed to do, in the acquittal of my clients, and thinking there was no ſafety for them but by making ſuch a confuſion in Court as to prevent your hearing the evidence, or the Judges' obſervations on it, I ſhould, when I had finiſhed my addreſs to you, and the Judge was beginning to ſum up to you, publicly begin or join in a ſcene of noiſe and uproar, under the eyes of the Judges, as they now look at me—of the Officers, now ſitting before me—of you, the Jury, to whom I am ſpeaking—of my numerous friends at the Bar, whoſe honour is connected with the dignity of the Court —and of the whole croud of ſpectators, hundreds of whom I am known to perſonally, and all of whom are acquainted with my perſon.

Gentlemen, I can obſerve, from the abſurdity and impoſſibility of the caſe I am putting, that I ſeem to be trifling with the ſubject: but that ſenſation, which I have no doubt is general, and which I cannot help even feeling myſelf, diſplays the irreſiſtible force of the actual caſe before you; becauſe I defy the wit, or wiſdom, or imagination, of man, to attempt even a ſhadow of a diſtinction between the caſe I have put to you and that of Mr. Ferguſſon:—for, why ſhould *he* be ſuppoſed, any more than *myſelf*, who am the object of compariſon, to have embarked in this impracticable project of diſgrace, diſhonour, and injuſtice: in the dreſs of Counſel, as much as I am; on the trial which engaged the Court; and in a place, the exact ſimilarity of which to the room that holds us is no aſſertion of mine, but a fact ſo unalterably eſtabliſhed by the whole evidence as to be employed by both ſides as an aſſiſtant to the mind in judging of the accuracy and conſiſtency of the proof?

The next recourſe to probability, if your judgments, as in all other caſes, are to be governed by reaſon and experience, is, if poſſible, ſtill more unanſwerable and deciſive.

Suppoſing the Defendants, without intereſt or motive, and without the poſſibility of ſucceſs, and without even a chance of eſcaping from detection and puniſhment, to have nevertheleſs publicly inſulted and diſturbed the Court by acts of diſorder and violence, WHO MUST HAVE BEEN THE WITNESSES TO SUCH A SCENE? Who, for inſtance, muſt have been the witneſſes, if Mr. Ferguſſon, as has been aſſerted, had ſtood upon the table of the Court—the table round which the Counſel are ranged, directly under the eyes of the Judges and the Jury; and had flouriſhed a ſtick round his head, to favour the eſcape

of

of the priſoner, by preventing the officers from approaching him;—*who, I ſay again, muſt have been the witneſſes to ſuch a phenomenon?*—who, amongſt the Judges, or Counſel, or officers, or ſpectators, but muſt have ſeen it?—who, that had ſeen it, could poſſibly have forgotten it?—and who, that remembered it, could have hung back from the proof of ſuch inexcuſable miſconduct? Yet the proof of this fact, to which the whole Court muſt have been, as it were, but one eye, and an eye of indignation, is not ſupported by any one perſon, either upon the Bench, or at the Bar, or amongſt the numerous officers of the Court. On the contrary, we ſhall ſee, by and by, the difference between the teſtimony of a reverend Judge of England and that of a Bow-ſtreet officer, when I come to advert to the evidence of Mr. Juſtice Heath, which is directly and poſitively inconſiſtent with Rivett's, on whoſe ſingle and unſupported teſtimony this extravagant and incredible part of the caſe is alone ſupported.

But, it ſeems, they have given judgment againſt themſelves, by their demeanour and expreſſions upon the occaſion. Lord Thanet, it ſeems, ſaid to Mr. Juſtice Lawrence, as Mr. Abbot expreſſed it, who did not hear what the Learned Judge had ſaid, to which Lord Thanet's words were an anſwer, "that "it was fair he ſhould have a run for it;"—words which cannot be tortured into any other meaning, more eſpecially when addreſſed to one of the Judges of the Court, than that, ſpeaking in extenuation of Mr. O'Connor's conduct, who had viſibly made an effort to eſcape, he thought it fair that a perſon ſo circumſtanced ſhould have a run for it, if he could; a ſentiment which, by the by, no man in his ſenſes would have uttered, more eſpecially in ſuch a quarter, if he had felt himſelf at all implicated in a criminal endeavour to aſſiſt him: And if Lord Thanet did not ſpeak at this moment with all that complacency which in general ſo much diſtinguiſhes him, nor offer, as Mr. Sheridan did, his aſſiſtance to the Judges, it is not at all to be wondered at; for it muſt be recollected that he had juſt ſuffered in his perſon, not as you have it upon the evidence at preſent, but had been moſt roughly and ſeverely aſſaulted. Mr. Juſtice Buller is proved to have ſaid, that Mr. Sheridan conducted himſelf in a manner greatly to his ſatisfaction: But the very contraſt which this evidence is introduced to furniſh, inſtead of operating againſt Lord Thanet, is an additional argument in his favour. Lord Thanet and Mr. Sheridan are as one man in every thing which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan ſhould be aſſiſting the Judge, whilſt Lord Thanet, who had no connection with Mr. O'Connor which did not equally belong to the other, ſhould be behaving like a madman, unſupported by any of his friends or acquaintances, who

were attending as witneſſes upon the trial? But the time of this converſation, if I had before adverted to it, would have rendered all theſe obſervations wholly unneceſſary; for it was *after* the riot (as it indeed muſt have been), that Mr. Juſtice Lawrence converſed with Lord Thanet, ſaying to him, amongſt other things, "that he hoped Mr. O'Connor's friends would "adviſe him to ſubmit to his ſituation." Now I may ſafely aſſert, that, high as Lord Thanet's rank is, that Learned Judge would not have ſpoken to him as a perſon from whom he ſolicited and expected aſſiſtance, if he had himſelf obſerved him, or if he had known him to have been obſerved by others, diſturbing the order of the Court. On the contrary, if there had been a reaſonable ground for impeaching Lord Thanet's conduct, the Learned Judge would have executed the law upon him: he would have attached him for his contempt; and ſurely no perſon in Court had a better opportunity of obſerving every thing that paſſed in it. Mr. Juſtice Lawrence was one of the youngeſt of the Learned Judges who preſided at the trial, with ſtronger health than belonged to all of them, which enabled him to keep up his attention, and to obſerve with acuteneſs: He was, beſides, deeply intereſted in whatever concerned the honour of the Court; and the elevation of the bench on which he ſat gave him a full view of every perſon within it. Indeed, Lord Thanet, at the time this miſdemeanour is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to ſay, that not only nothing is to be preſumed againſt Lord Thanet from what he ſaid, but that, on the contrary, a ſtrong preſumption ariſes in his favour when we hear the evidence from any other mouth than that of the Learned Judge himſelf; ſince, if *he to whom the diſcourſe was addreſſed*, and who was the beſt judge of the fair conſtruction to be put upon it, had conſidered it in the light it has been repreſented and relied on, he might have been called as a witneſs. Mr. Juſtice Heath and Mr. Serjeant Shepherd, the Judges in the ſame Commiſſion, were examined to matters infinitely leſs material.

Gentlemen, let us now pauſe a little, to conſider the effect which I feel myſelf entitled to derive from theſe obſervations. I conſider myſelf to have advanced no farther in the argument than this:

Firſt, That there was no aſſigned nor aſſignable motive for the criminal purpoſe charged by the indictment.

Secondly, That it was a purpoſe palpably impracticable, and which, therefore, no reaſonable men could poſſibly have engaged in with any proſpect of ſucceſs.

Thirdly, That whatever might have been the probable iſſue of ſuch an enterprize, detection and puniſhment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the Defendants did not conduct themſelves like men engaged in ſuch a purſuit, nor appear to have been ſupported in a manner reaſonably, or even poſſibly, conſiſtent with the alledged conſpiracy.

Fifthly, That, although the witneſſes againſt them, if the tranſaction had been juſtly repreſented, muſt probably have been the greateſt part of the Court, and certainly all that part of it elevated both by ſituation and authority above the reſt; yet that there has been not only no ſuch concurrence of teſtimony againſt the Defendants, but, on the contrary, the moſt correct and reſpectable witneſſes have concurred in deſtroying the remainder of the proof.

Sixthly, That the expreſſions imputed to Lord Thanet cannot poſſibly affect him, without ſuppoſing that he publicly gave evidence againſt himſelf, even to one of the Judges, who, upon the evidence of his own ſenſes, had authority to have puniſhed him upon the ſpot.

Laſtly, That it appears, by the whole body of the proof, that the confuſion aroſe when the officers burſt with improper and indecent precipitation into Court: That it began and ended almoſt in the ſame breath; and that, during the ſhort moment of its continuance, there was ſuch a ſcene of tumult and confuſion as to render it impoſſible for the moſt attentive obſerver to give any clear and diſtinct accounts of the tranſaction.

If theſe concluſions, Gentlemen, be the unavoidable reſult of the Crown's evidence when brought to the common ſtandard of man's reaſon and experience, it appears to me that you are bound to return a verdict for all the Defendants, even if I ſhould call no witneſſes; becauſe, to juſtify a verdict of *guilty*, it is not enough to collect from the evidence that the Defendants *may* be guilty, or *probably are* guilty—*No*;—their innocence muſt be quite incompatible with the fair reſult of the whole proof; for, if two different concluſions may be reaſonably drawn from the ſame ſtate of facts, you are bound in juſtice to adopt the one which is ſupported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to ſay poſitively and firmly, becauſe I am making my appeal to men of underſtanding and liberal education, that the evidence for the Crown, without any at all on my part to oppoſe it, taking it altogether, and conſidering the fair reſult of it, is not ſufficient to convict any of the Defendants. This propoſition, however, cannot be ſupported by general obſervations, nor by that general appeal to the proof which I have been engaged in: it muſt be examined accurately in the detail. I ſhrink from no part of it. I will ſum it up to you as if I ſpoke to you from the Bench; and I pledge myſelf to make out,

out, to the ſatisfaction of every unprejudiced mind, that all that I have hitherto ſaid to you, though abſolutely neceſſary by way of introduction, has ſuffered from its generality; and that the particulars of the proof will illuſtrate and confirm, beyond all queſtion, every propoſition of fact, and every principle of judgment, which I have already brought before you.

The firſt witneſs examined for the Crown is Mr. Serjeant SHEPHERD, who was joined with the Judges in the Special Commiſſion. This examination is highly important in every part of it; becauſe, when it becomes neceſſary to compare the evidence of different witneſſes in order to arrive at a ſafe concluſion from the whole, nothing can be ſo ſatisfactory as to find ſome perſon on whoſe teſtimony the judgment may repoſe with ſafety. My Learned Friend (as all who know him muſt have anticipated) delivered his evidence with the greateſt clearneſs and preciſion, and in a manner moſt diſpaſſionate; and when you recollect, beſides, that he is a man of ſingular ability, and that, from his elevated ſituation in the Court, he had the beſt opportunity of obſerving every thing that paſſed, you cannot fail to pay greater attention to his teſtimony, and to that of Mr Juſtice Heath, who immediately followed him, than to any other witneſſes, however reſpectable.

In bringing before you Mr. Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer diſputed, but will take it up from the time when the Jury returned into Court. Mr. Serjeant Shepherd ſays, "*Lord Thanet was ſtanding before the bar at* "*which the priſoners ſtood, with his face turned towards the* "*Court: he was rather to the right hand of Mr. O'Connor,* "*neareſt to the great ſtreet of Maidſtone where the gaoler ſat.*" Speaking of Mr. O'Bryen, he ſaid, that "*he ſtood in the ſame* "*line, but rather to the left of Mr. O'Connor; that ſome-*"*thing had been before ſaid by the Bow-ſtreet officers, who* "*were making a noiſe, and had been deſired to be quiet.* "*When the verdict of Not Guilty was delivered, ſome perſons* "*(but whom, I know not) ſaid, 'Then they are diſcharged;'* "*and ſomebody at the table replied, 'No, they are not diſ-*"*charged.*" And here I have no objection, that what Mr. Serjeant Shepherd omitted may be filled up by Mr. Solicitor General's evidence, and that the anſwer from the table was to Mr. Ferguſſon, who, on hearing the verdict pronounced, had ſaid the priſoner was diſcharged: he ſaid it, however, before the Court had declared the law upon the ſubject. As counſel for the priſoners, it was natural he ſhould be intereſted in their deliverance; and he is not indicted for having miſtaken the effect of the law, but for having conſpired to obſtruct the Court in adminiſtering it. The Attorney-General ſaid, very properly, "I bring the Defendants before you, not for conſider-

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ing the priſoners diſcharged by the verdict, but for an attempt to reſcue them by violence and tumult, after the Court had declared that they were in cuſtody."—"*At this time,*" continued the learned Serjeant, "*Mr. Juſtice Buller ſaid to the gaoler, 'Put the other priſoners back, and let O'Coigly ſtand for-'ward;' when one of the Bow-ſtreet officers ſtood up on a "form, and ſaid he had a warrant againſt Mr. O'Connor.*" This, you obſerve, was the firſt time there was any mention of a warrant in Court: ſo that what had before fallen from Mr. Ferguſſon was merely his ſudden idea of the effect of the verdict of Not Guilty at the moment it was pronounced, and which, at all events, muſt, in a few minutes afterwards, have delivered the priſoner; and there is no evidence whatever, that, at the time he ſaid ſo, a freſh cuſtody was a matter of apprehenſion or contemplation.—"*Whilſt Mr. Juſtice Buller "was paſſing ſentence, my attention,*" continued Mr. Serjeant Shepherd, "*was directed to O'Coigly; and when he had "finiſhed, I obſerved Mr. O'Bryen turn round, and* LOOK *at "Mr. O'Connor, and, immediately afterwards,* LOOK DOWN *"with a very ſlight motion and inclination of his head.*" And here, Gentlemen, it is impoſſible not to admire that delicate ſenſe of juſtice which no man poſſeſſes more than my learned friend the Serjeant, and which dictated to him the remarkable reſerve which accompanied this part of his evidence. He recollected that a witneſs is not to put himſelf in the place of a Jury, by drawing *his own* concluſions from his own teſtimony; but accurately to ſtate what he hears and ſees, and to leave the concluſion to thoſe whoſe province it is to decide. He therefore, with the utmoſt propriety, forbore from expreſſing what appeared to him to be Mr. O'Bryen's purpoſe; but ſaid to you, "*I "rather chuſe to deſcribe his geſture;*" which he accordingly did. This fact, therefore, delivered with the reſtraint which the integrity and underſtanding of the witneſs ſo properly ſuggeſted, affords no evidence whatever of evil deſign in Mr. O'Bryen, much leſs of concert or combination with the other Defendants; and indeed the proceedings of this very day have afforded an inſtance, how dangerous it would be for the moſt ſagacious perſons to collect, from geſtures only, what paſſes in the mind of another. When Lord Romney, not chuſing to advance in his evidence beyond what his memory with certainty ſuggeſted, declined giving a farther anſwer to a queſtion put to him, the Noble and Learned Chief Juſtice interpoſed, and put the queſtion to him again. I admit that it was his duty to do ſo—But his Lordſhip will forgive me if I ſay, and I appeal to his honour for the truth of it, that he was convinced at the moment, not only that I thought the *direct contrary*, but that I had publicly and rudely expreſſed a ſenſation of diſſatisfaction; ſince, looking at me very ſignificantly, his Lordſhip told me

that

that it was his duty to repeat the question. Nevertheleſs, I do declare upon my honour, and I appeal to Mr. Gibbs, to whom I was ſpeaking at the moment on quite a different ſubject, that no ſuch idea was paſſing in my mind as my geſtures were ſuppoſed to have expreſſed. Yet no man is a more acute obſervet of human nature than his Lordſhip; and nobody, certainly, was ever better acquainted with my countenance. So much for geſtures. It is, indeed, ſtrongly in Mr. O'Bryen's favour, that at the moment he looked down, as deſcribed by the witneſs, he could not be acting in concert with Lord Thanet; for Serjeant Shepherd ſaw Lord Thanet *at the very ſame moment*, and ſwore that he was ſtanding with his face to the Court, and that he never changed his poſition. The Serjeant added, that "*when the laſt word of the ſentence was pronounced, Mr.* "*O'Connor jumped with his left foot upon the bar, and his* "*left hand upon the ſhoulder of Mr. O'Bryen,*" but who does not appear to have held out his hand to aſſiſt him. Mr. O'Bryen, on the contrary, though he could not have but continued in view for ſome time longer, is charged with no one act whatſoever; and it would be ſtrange indeed to convict a gentleman of a reſcue, becauſe, ſtanding near a priſoner meditating an eſcape, he had laid his hand upon his ſhoulder. But this part of the caſe will be put quite at reſt hereafter; becauſe Mr. O'Bryen is perfectly well known to ſeveral gentlemen of diſtinction, present in Court at the time, and not at all implicated in the riot, who will all tell you that they ſaw him diſtinctly, and that he was not concerned in any violence or diſturbance whatſoever. I am not, however, called upon to do this, becauſe there is literally no proof to be anſwered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is ſo abſolutely deciſive, that you will be driven to pronounce by your verdict, whether you give credit to this moſt reſpectable and obſerving witneſs, or to a Bow-ſtreet officer, who was himſelf the author of the confuſion; for the Serjeant added, that "*when Mr. O'Connor had jumped* "*over the bar, and he had loſt ſight of him, the officers ruſhed* "*into Court to arreſt him, and a great noiſe enſued; and* AT "THIS TIME," (GENTLEMEN, THE TIME IS MOST MATERIAL AND CRITICAL, BECAUSE IT CAN APPLY TO NO OTHER THAN THE PRECISE TIME SWORN TO BY RIVETT), "*I ſaw* "*Lord Thanet,*" ſaid the Serjeant, "*ſtanding as I have de-* "*ſcribed him, with both his hands over his head,*"—which he alſo deſcribed to you by putting himſelf in the ſame defenſive poſture, as far more expreſſive of his ſituation than any words could communicate. This, I ſay, is the ſingle point of time to be looked at; for the remainder of the Serjeant's original evidence, applying to a ſubſequent period, deſcribed a ſcene of great confuſion, in which he ſaid he could diſcover nothing

nothing diſtinctly; that many perſons were upon the table, ſome aſking queſtions, others endeavouring to reſtore order. It is not, therefore, at this period that you are to look, ſince no part of the evidence at all applies to it: but at the moment when Lord Thanet is alone affected by Rivett's evidence, the Serjeant's teſtimony has a direct and deciſive application; for, upon his cross-examination, he ſaid in ſo many words, "*I never ſaw Lord Thanet look round, or "change his poſition as I have before deſcribed it, till the very "inſtant the officers ruſhed into Court; and* THEN *I ſaw him "with his ſtick, held as I before deſcribed it; but I am* BOUND "*to ſay that he appeared to me to be acting on the* DEFENSIVE "WHOLLY." This concluding evidence is an exculpation of Lord Thanet, and muſt have been ſo intended. I did not even put the queſtion to the witneſs: he himſelf conſcientiouſly added, that he was BOUND (bound, of courſe, in juſtice to Lord Thanet, who was accuſed of *active violence*) to ſay, that he appeared to be only acting in his own defence. Now, Gentlemen, there can be neither honour, nor advantage, nor ſecurity, beſtowed upon the adminiſtration of Government or Juſtice, which this proſecution is avowedly inſtituted to ſupport, if men can be puniſhed, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a Court of Juſtice muſt not be inſulted, or even diſturbed, is a propoſition which muſt be acceded to by every man acquainted with the firſt elements of civil life—That a charge of ſuch a high miſdemeanour well juſtifies the ſolemnity of a trial in this place, is another propoſition which cannot be diſputed—But the heinouſneſs of offences, and the neceſſity of ſuppreſſing them by puniſhment, does not alter the quality of the proofs by which they are to be eſtabliſhed: On the contrary, it was pleaſant to attend to the juſt reſerve in that reſpect with which the Attorney-General laid the caſe before you: He ſtated his own evidence in general terms, but without commenting upon it, or enforcing it; reſerving his obſervations till the evidence on both ſides ſhould be heard: but we are not even engaged at preſent in balancing contradictory evidence, but in ſhewing that the accuſing evidence is in itſelf defective, and even exculpatory.

Mr. Serjeant Shepherd was properly ſelected as the firſt witneſs for the Crown. He ſat, from his ſtation as Judge, in an elevated poſition, where he had a better opportunity of obſerving than others; and he accordingly appears to have obſerved every thing which paſſed: Yet, inſtead of faſtening guilt on Lord Thanet, he ſees him, from the time the Jury returned into Court, ſtanding in one poſition; not looking round as if he was watching the motions of Mr. O'Connor, or engaged with others in attending to them; not even looking towards the ſide of the Court

Court from whence the arreſt was to proceed, but upwards to the Judges; not oppoſing his body as an obſtacle in a narrow paſſage through which the officers were to paſs; not preſenting a front to them which a man of his ſtrength, with the intentions imputed to him, muſt naturally have been expected to do; but ſtanding, as any other perſon attentive to the trial, till the officers, apprehending a reſcue, ruſhed with violence into Court, and preſſed upon and aſſaulted him; for, had he not been preſſed upon and aſſaulted, he could not have been ſeen by Serjeant Shepherd in a poſture of defence: And if he was firſt active in obſtructing and aſſaulting Rivett, in the manner which he, and he only, has ſworn to, why ſhould not Serjeant Shepherd have ſeen it? ſince his eye was ſo conſtantly fixed upon Lord Thanet, from the time the Jury returned with their verdict till the confuſion became general, which is ſubſequent to the period of Rivett's evidence, as to enable him to tell you that he did not ſhift his poſition, nor make a geſture or motion, till the officers and others ruſhed in upon him; and *then*, *i. e.* immediately, at the ſame moment to which alone the evidence has any application, he ſees Lord Thanet with a ſtick over his head, which he thinks himſelf BOUND to expreſs, and even to *deſcribe* to you as a paſſive poſture of defence.—This evidence, which ſo completely exculpates Lord Thanet, is not leſs applicable to Mr. Ferguſſon; for if he, who is placed by all the witneſſes as ſtanding cloſe by him, had been an active conſpirator, armed with a ſtick, which he was flouriſhing over the heads of the officers, can you poſſibly ſuppoſe that he would have withheld his aſſiſtance from Lord Thanet, who was viſibly overpowered; or that a man of Lord Thanet's ſtrength, though aſſiſted by Mr. Ferguſſon, who is above ſix feet high, and a young man of great activity and ſtrength, ſhould be perfectly paſſive under the blows of Rivett, endeavouring only to ſave his perſon from violence, without retaliation, or even a motion to the accompliſhment of his object?

The evidence of Rivett is farther expoſed, by his having denied that Lord Thanet had a ſtick—a fact eſtabliſhed beyond all queſtion; and by his ſwearing that he took the ſtick from Mr. Ferguſſon, and ſtruck him with it—when it will appear by and by that he took it from behind his own coat when he aſſaulted Lord Thanet.—This laſt fact, however, I ought to have paſſed over at preſent, becauſe it ariſes out of my own evidence, which I do not wiſh at all to mix with my obſervations on the caſe of the Crown.

Gentlemen, the other Judges, with the exception of Mr. Juſtice Heath (whoſe teſtimony will alſo ſupport the innocence of the Defendants), have not been examined, though their poſitions in Court were ſo highly favourable: neither has the Bar been examined, who, if Lord Thanet had been in the ſituation which

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ſome of the witneſſes have deſcribed, muſt have all ſeen it to a man; and their not having been called, affords a ſtrong inference that their evidence would not have been favourable.

Mr. Huſſey, who was next examined, ſaid, "*I ſaw Mr.* "*O'Connor attempt to get over the bar,*" (a fact never diſputed); "*and at that time Lord Thanet was ſtanding with his* "*back to the priſoners. I ſaw ſomebody preſſing forward, who* "*ſaid he had a warrant; but I ſaw no paper. Lord Thanet* "SEEMED *to preſs himſelf towards the bar, and* SEEMED TO BE "DESIROUS *to interrupt his progreſs.*" I dare ſay, the Rev. Mr. Huſſey meant to tell you what he ſaw; but he has expreſſed nothing. What can be collected from ſuch expreſſions?—Can you convict any man upon evidence which imputes *no act*, but only a *ſeeming deſirouſneſs*. Lord Thanet SEEMED to preſs himſelf towards the bar, and *ſeemed* to be deſirous of interrupting the officer's progreſs. Did the witneſs SEE him do the one, or the other? If he had, he would of courſe have ſo expreſſed it; and if Lord Thanet had actually done ſo, why ſhould not Mr. Serjeant Shepherd have equally ſeen it, who obſerved him accurately *at the very ſame moment?* The ſame anſwer was given by the laſt witneſs, Mr. Parker; and from which one might have been deſired alſo to conclude that Lord Thanet was an active rioter: He SEEMED to be encouraging—But what did he do when he SEEMED to be encouraging? He put his hands *ſo!*—What then? If I am not proved to be in combination or concert with any one, nor to have myſelf committed any act of violence, is riot or diſorder to be imputed to me, only becauſe, in the midſt of a ſcene of uproar, I appear to be irritated from a ſenſe of danger, or from inſults which I have received? If, indeed, a perſon could not account for his preſence in a ſcene of riot, the caſe might be different: the preſumption might *then* ſupply the defect of actual proof. If people were engaged in the deſtruction of a houſe, or in the commiſſion of any other violence, and I were ſeen buſtling or making geſtures in the midſt of them, my very preſence might be evidence againſt me: "How came you "there, Mr. Erſkine," might be the queſtion, "at a diſtance "from your own houſe, and in the middle of the night?" But theſe preſumptions have here no application; for Lord Thanet was attending as a witneſs under the proceſs of the Court, and is deſcribed by one of the Learned Judges as ſtanding originally in his proper place, and not changing his poſition. The whole of Mr. Huſſey's evidence, therefore, amounts only to this—that Lord Thanet SEEMED to preſs forward, and that, too, *at the very ſame moment* when Mr. Serjeant Shepherd deſcribed him as unmoved and motionleſs, with his back to the priſoner, and his face, of courſe, towards the Court.

Gentlemen, I feel that it muſt be painful to you to be obliged to attend to theſe minute obſervations; but it is a ſolemn duty

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impoſed upon me to point out every fact and circumſtance of the proof, by which you are ſworn to regulate your verdict: the ſameneſs and repetition are nauſeous; but that is the very ſtrength of the Defendants' caſe, becauſe it ſhews the concurrence of the teſtimony which acquits them. How, indeed, can one expect variety in the diſcuſſion of a tranſaction which, all the witneſſes ſay, was like a flaſh of lightning, beginning on a ſudden, when, from the apprehenſion of a reſcue, the officers ruſhed into Court, and ending (as far as the evidence goes) in the confuſion which almoſt immediately followed; leaving only for your deciſion, whether, if, in ſuch a crowd, it happens that I am rudely preſſed upon, I am a criminal for defending myſelf? and whether, if, in the midſt of ſuch a ſcene of confuſion, ſome of my poſtures or geſtures are not underſtood by others who ſee me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my perſonal liberty, and, what is ſtill dearer to me, my perſonal honour and reputation?

Lord Romney is the next witneſs, whoſe evidence was juſt what might have been expected from a perſon in his ſituation—highly intereſted in the honour of the County where he has great hereditary eſtates and honours, where he has important duties to perform, and where, owing a particular attention to the King's Court, he felt, no doubt, a correſponding anxiety that it ſhould ſuffer no diſgrace nor interruption in its proceedings. He was placed, beſides, in that part of the Court where he was entitled by his rank to ſit, from whence he had an opportunity of obſerving what was tranſacting. Thus circumſtanced, he ſays, "*I ſaw the Bow-ſtreet officers* FORCING *a paſſage*, AND "STRIKING BLOWS:—*whom they ſtruck, I do not know;* "*there was a ſword brandiſhing on the table. Thinking things* "*bore a ſerious aſpect, I croſſed the table, and ſaw the priſoner* "*eſcaping: he was brought back by the javelin-men. I ſaid* "*to them, 'Form yourſelves round the priſoner, for he is not yet* "*diſcharged.' I was told afterwards I had ſaid 'he was* "*not acquitted:'* I believe Mr. Ferguſſon *ſaid ſo: I have no* "*doubt I made the miſtake.*"—Gentlemen, undoubtedly Lord Romney meant only to ſay that Mr. O'Connor was not *diſcharged;* though the anſwer was not made to him by Mr. Ferguſſon—for I ſhall call the Gentleman himſelf who anſwered him; not that it is in the leaſt material, except that it proves that Mr. Ferguſſon was noticed at that time by Lord Romney; and ſurely, Gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave he has been repreſented to you—if, in his profeſſional dreſs, he had been publicly flouriſhing a ſtick upon the table, Lord Romney, who was cloſe by him, muſt inevitably have obſerved him; yet his Lordſhip does not ſpeak of him as out of his place, or as engaged in any act

act of diſorder or violence. Another moſt important fact is eſtabliſhed by Lord Romney's evidence: For, though his Lordſhip ſaid that he ſhould have been ſo much hurt if the County had been diſgraced, that his attention was not directed to individuals, and that in the confuſion he could not tell who had been ſtruck in the paſſage by the officers, yet he added, that VERY MANY *blows were ſtruck, and* MANY *perſons hurt.* Yet Rivett ſays, that Fugion ſtruck no blows; that Adams ſtruck no blows; that the Meſſenger ſtruck none; nor he himſelf any but thoſe which were ſtruck at Lord Thanet. Rivett, therefore, according to his own account, was the only perſon engaged, and ſucceſsfully engaged, againſt the rioters; yet you are deſired to believe that a large combination of ſtrong and active conſpirators were favouring an eſcape by violence. This is quite impoſſible; and the blows, therefore, which were obſerved by Lord Romney, were the blows which the *officers themſelves* wantonly inflicted: For it will appear hereafter, by witneſſes whom the Court cannot but reſpect, and whoſe evidence cannot be reaſonably rejected, that they ruſhed in like madmen, ſtriking with violence the moſt harmleſs and inoffenſive perſons, which compelled others to put themſelves into that paſſive poſture of defence that Lord Thanet has been ſo frequently and ſo diſtinctly deſcribed in. There is nothing more that is material in Lord Romney's examination: Something was alluded to, reſpecting a converſation with Mr. Juſtice Lawrence; but his Lordſhip, with the greateſt propriety, not chuſing to advance beyond his moſt perfect recollection, did not particularize it;—nor could it be material; for, beſides that it appears to be ſupplied by other evidences, if it had been of any importance, Mr. Juſtice Lawrence himſelf would no doubt have been called as a witneſs. For my own part, I think it extremely likely that it has been already correctly repreſented. Lord Thanet, ſmarting under the blows he had received, did not probably exhibit the ſame courteſy with Mr. Sheridan: but I have already obſerved to you, that this circumſtance gives me another important witneſs —no other than Mr. Sheridan himſelf, whoſe deportment was thus remarked and approved of; for, beſides that it is impoſſible to aſcribe a criminal motive, either from public opinion, or acquaintance with the priſoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you, upon his ſolemn oath, that he obſerved all that paſſed; and he will be able moſt diſtinctly to exculpate both Mr. Ferguſſon and Lord Thanet from every part of the charge.

Gentlemen, I will now ſtate to you the Solicitor-General's evidence. He ſays, "*I kept my eye fixed on Mr. O'Connor.* "*When the Jury gave their verdict, I obſerved him and Mr.* "*Ferguſſon: I particularly fixed my eyes upon them. I ob-* "*ſerved Mr. Ferguſſon ſpeaking to Mr. O'Connor, and Mr.*

" *O'Connor put his leg over the bar: I called out, 'Stop him!'*
" *Mr. Ferguſſon ſaid, 'He is diſcharged.' I anſwered, 'He*
" *is not diſcharged.' Mr. Ferguſſon then ſaid to Mr. O'Connor,*
" *'You* ARE *diſcharged.' I repeated, 'He is not diſcharged.'*
" *I obſerved the Gaoler lean over, and lay hold of Mr. O'Con-*
" *nor: Some perſon was at this time preſſing forward, and*
" *Mr. Ferguſſon complained to the Court. The officer was*
" *preſſing into Court, in order to get round to Mr. O'Connor.*"—
Now, Gentlemen, it is fit juſt to pauſe here a little, to conſider this part of the evidence. The time filled by it is not above two or three minutes—for it is only the interval occupied by the ſentence upon O'Coigly; and if a combination had exiſted between Lord Thanet and Mr. Ferguſſon, and other perſons in the ſecret, is it probable that Mr. Ferguſſon would have made himſelf the conſpicuous figure which I am ſuppoſing the evidence truly to repreſent him to have done? His conduct, beſides, appears quite different, from Rivett's account of it. Did he enter into private reſiſtance or altercation? No:—He made a regular and public motion to the Court; the Judge yielded to the ſuggeſtion—the Officers were directed to ſtand back for the preſent, and then the ſentence was pronounced. This is not the natural deportment of a perſon engaged in a conſpiracy: Nothing but the purity of Mr. Ferguſſon's intentions, and the unconſciouſneſs of offence, could have induced him to put himſelf ſo publicly forward by a regular motion to the Court; and ſuch a conduct is ſurely very inconſiſtent with that of a perſon who was meditating at the moment to carry his point by violence, in the teeth of the Court which he addreſſed.—The Solicitor-General further ſaid, " *Rivett, the officer, ſaid he had a*
" *warrant againſt Mr. O'Connor. Mr. Juſtice Buller ſpoke*
" *to the officers, commanded ſilence, and proceeded to paſs ſen-*
" *tence. When the ſentence was finiſhed, I obſerved Mr. Fer-*
" *guſſon, and ſome other perſons whom I did not know,* ENCOU-
" RAGING *Mr. O'Connor to go over the bar.*" Here we muſt pauſe again. Mr. Gibbs aſked the witneſs, upon his croſs-examination, " *Did you hear him ſay any thing? Did you ſee*
" *him do any thing?*" The Solicitor-General proved no one thing which Mr. Ferguſſon ſaid or did. I am ſure I mean no thing in the leaſt diſreſpectful to the learned Gentleman; but it certainly did not occur to him at the moment, that it is not the office of a witneſs to pronounce by his own evidence that a man *encourages* or *ſupports*,—but he is to depoſe what he heard him *ſay*, or ſaw him *do*—from whence the *Jury* are to draw the inference which is fit. I really mean no ſort of reflection;—perhaps it aroſe from the habits of the Court of Chancery, whoſe practice is very different from our's, and where the depoſitions are of a very general nature: But ſuppoſe the Solicitor were to die whilſt I am ſpeaking to you, and that, though you ſhould

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be ſatisfied as to all the reſt of the evidence, you wiſhed to have it explained *with preciſion* what was intended to be conveyed when it was ſaid Mr. Ferguſſon was ENCOURAGING, would you condemn Mr. Ferguſſon upon that evidence, without knowing diſtinctly what act he had committed? Could you convict a fellow-ſubject upon the general evidence that he encouraged miſchief, without knowing *what he did?* Certainly not;—you muſt hear *the fact;* and it is then for *you, and for you only,* when you have heard it, to draw your own concluſion. The Noble and Learned Lord, with whom we in a manner ſpend our lives in this place, is in the conſtant courſe of ſaying to witneſſes, Tell us what was done, and WE will judge of its quality. By theſe obſervations, I am not impeaching the evidence of the Solicitor-General, but I am commenting as a lawyer upon the reſult of it; and I do ſay, as a lawyer, that it is giving no evidence at all, to ſwear that a man encouraged, or *appeared* to be encouraging, without ſtating the facts on which that impreſſion of his mind was founded.—Mr. Solicitor-General went on to ſay, "*I did not ſee Mr. O'Connor till he was* "*brought back by the officers: for at the inſtant that Mr.* "*O'Connor jumped over the bar, three or four perſons leaped* "*from the witneſſes' box upon the table, and mixed amongſt* "*the rioters; all the lights, except thoſe before the Judges,* "*and the chandeliers, were extinguiſhed. Mr. Fergnſſon, at* "*the moment Mr. O'Connor jumped over the bar, turned round,* "*and* APPEARED *to follow Mr. O'Connor;* BUT I WILL NOT "POSITIVELY SWEAR IT." I am very glad, Gentlemen, that he did not; becauſe it would have been unpleaſant to ſwear that poſitively which will be poſitively contradicted—by thoſe, too, who are of as good faith, and who had as good an opportunity of obſerving. It is a mere miſapprehenſion; and I would ſay to the Solicitor-General, if I were to ſee him at his own table or at mine, *that he is miſtaken.* Indeed, in a ſcene of confuſion, no man can tell what he ſees with any certainty or preciſion, and images are frequently confounded in the memory.—The Solicitor-General then ſaid, *that Mr. Stafford jumped upon the table, and drew a ſword;* and, ſpeaking of Lord Thanet, he ſaid, *he went acroſs the table, and that he ſaw him in converſation with Mr. Juſtice Lawrence,* the particulars of which he did not hear; *but that, when he went acroſs the table again, he ſaid he thought it fair he ſhould have a run for it: He ſaid it rather in a tone of anger, in conſequence of what had fallen from Mr. Juſtice Lawrence.* Gentlemen, this laſt part of the evidence applies to a point of time when the diſturbance was at an end—after every thing had paſſed in the preſence and obſervation of the Court—after the diſturbance had given manifeſt and juſt offence to the Judges, and after they had declared that their proceedings had been interrupted,

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taining in your minds the teſtimony of the Crown's moſt reſpectable witneſs, on which I have been ſo long obſerving, I ſhall leave you to judge for yourſelves, whether it be poſſible that what he ſays can be the truth, independently of the poſitive contradiction it will receive hereafter? Indeed, the evidence of this man adminiſters a moſt important caution to juries, not to place too implicit a confidence to what is ſworn with poſitiveneſs, but to found their judgments upon the moſt probable reſult from the whole body of the proof.

Rivett ſays, "*I ſaw a gentleman, whom I was told was* "*Mr. Thompſon, and I have never ſeen him ſince. He aſked me* "*what buſineſs I had there, and if there was any thing againſt* "*Mr. O'Connor?*"—evidently meaning a warrant, as he afterwards explained it. I need not, however, purſue this part of his evidence, becauſe he did not identify Mr. Thompſon, though he ſat before him in Court, but pointed to another perſon. I paſs on, therefore, to that part where he deſcribed the ſtate of the Court: "*Many gentlemen,*" he ſaid "*were* "*ſeated upon the Solicitors' bench,*" which has been already deſcribed to you as immediately before the priſoners, and without the Counſels' ſeat, in which Lord Thanet appears to have ſat till he ſtept into that of the Solicitors', where he was heard to ſpeak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time that Mr. Serjeant Shepherd deſcribed him as ſtanding unmoved, with his face to the Court, and his back to the priſoners:—Rivett went on to ſay, "*When the Jury were coming in, I endea-* "*voured to go nigh to the Gaoler, when I was pulled down by* "*the leg; and as ſoon as I turned round, I ſaw Mr. Thomp-* "*ſon,*" (who turns out not to have been Mr. Thompſon), "*I thought Mr. O'Connor looked as if he intended an eſcape.* "*At that time there was a noiſe and violence; and Mr. Fer-* "*guſſon ſaid to the Court, 'What buſineſs has this fellow* "*'here, making a noiſe?'*". Now, Gentlemen, this cannot be a correct ſtatement as it reſpects Mr. Ferguſſon, ſince it has been ſworn by all the Crown's moſt reſpectable witneſſes, that he made it a regular motion from the Bar, and the officers were deſired to ſtand back. "*I told his Lordſhip, I had a* "*warrant from the Duke of Portland to arreſt Mr. O'Connor;* "*and the Judge ſaid I ſhould have him, and deſired the* "*Gaoler to take care of the priſoners for the preſent. The* "*ſentence was then paſſed on O'Coigly; and as ſoon as it was* "*finiſhed, Mr. O'Connor immediately jumped out from the* "*bar; there was then a great confuſion in Court; the gen-* "*tleman who ſat before me got up; Mr. O'Connor took to the* "*left, and I called out to ſhut the door. I endeavoured to* "*get forward, but was prevented by thoſe gentlemen who* "*had placed themſelves before me and the other officers. I*

"*was*

"*was pulled and shoved down two or three times; but by* "*whom I know not. I jumped forward as well as I was* "*able, and was endeavouring to pursue Mr. O'Connor, when* "*Mr. Fergusson jumped on the table, and with a stick flou-* "*rished it in this way, to stop me. Mr. Fergusson was in* "*his gown. I sprang at him, and wrenched the stick out of* "*his hand; and then he returned from the table, and went* "*to his seat.*" I will not pause at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to Lord Thanet; because, if I can shew you that its application to him is demonstratively false when compared with the rest of the Crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, "*I was then knocked down by a person who pushed at* "*me with both hands, and I immediately struck that person* "*three or four blows.*" You will here be so good, Gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your Lordships have the goodness to see how you have got it?

[*Lord Kenyon and Mr. Justice Lawrence referred to their notes*].

Lord Kenyon.—I have it, "I struck him with my stick."

Mr. Erskine.—Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction: but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, "*He shoved me with both hands;*" and in his cross examination he afterwards described it, "*I struck that* "*person three or four blows: He called out 'Do not strike me* "*'any more;' I replied, 'I will; how dare you strike* "*'me?'*" You observe that he describes Lord Thanet as having no stick, and with having struck him; whereas Mr. Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the Judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Serjeant saw him leaning back, and defending himself with a stick which he held in both hands over his head—an account, which, if any corroboration of such a witness could be necessary, I will establish by eight Gentlemen who were present, and who will add, besides, in contradiction of Rivett, that Lord Thanet was himself beat severely, and never struck the officer with either fist or stick. That Lord Thanet *had a stick*, is beyond all controversy; and, having one, is it likely that a man of his strength and activity, en-

gaged in ſuch an enterprize, would only puſh at his opponent with his *hands*, or that Mr. Ferguſſon, who is charged as being an accomplice, would have contented himſelf with flouriſhing a little ſtick over his head?

MR. ATTORNEY-GENERAL.—I do not find that Rivett has at all ſaid that Lord Thanet had a ſtick.

MR. ERSKINE.—I have been reading his original examination. I will ſtate his croſs-examination by and by, and then ſet both of them againſt the truth. He ſays farther, and to which I deſire your moſt particular attention, "*I ſaw Mr. "Ferguſſon flouriſhing a ſtick about the middle of the table. I "went that way, to avoid the perſons who had ſtopped up the "paſſage. He endeavoured to prevent me; but I wrenched "it from him, and ſtruck him.* I HAD NOT THEN SEEN "LORD THANET." Now, Gentlemen, I have only to beg that you will have the goodneſs to make ſome mark upon the margin of your notes of this fact, which the witneſs has had the audacity and wickedneſs to ſwear to. I uſe theſe ſevere expreſſions which I have applied to no other witneſs in the cauſe, becauſe I never wantonly employ epithets that are unjuſt. He was in ſuch a ſituation that he cannot be miſtaken in what he ſwears: neither does he qualify it with his belief; but takes upon himſelf to marſhal the proceedings in his memory, and to affirm POSITIVELY both as to perſons and times. Yet I will prove Mr. Ferguſſon to have been within the bar in his place when Rivett ſpeaks of him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bow-ſtreet officers, but by Gentlemen as honourable as any who have been examined. Mr. Rivett told you too, "*that he came "along from the great ſtreet where the Star-Inn is, towards "the priſoner, to arreſt him; but that he went to the table to "avoid the gentlemen who interrupted him in his paſſage to-"wards him.*" Lord Thanet is one whom he poſitively fixed on as having done ſo. Lord Thanet then interrupted him in his paſſage to the priſoner, which induced him to go to the table where he had the conflict with Mr. Ferguſſon; and yet, according to his own deliberate declaration, he never ſaw Lord Thanet till *after* the ſtick had been flouriſhed by Mr. Ferguſſon over his head, and till after he had wrenched it out of his hand: for *then it was*, and for the *firſt* time, that he ſwears to have ſeen Lord Thanet. This is totally inconſiſtent, not only with the whole courſe of the evidence, but even with his own. And I will prove, beſides, by a gentleman who ſat next his Lordſhip, Mr. George Smith, the ſon of a late chairman of the Eaſt-India Company, a gentleman at the bar, and of independent fortune, that one of the firſt things Rivett did when he came into Court, was to preſs rudely upon HIM; and that Lord Thanet, without having ſtruck a blow, or offered any reſiſtance,

reſiſtance, was attacked by theſe men in a moſt furious manner; which accounts for the attitude of defence in which he has been ſo often deſcribed.

No embarraſſment or confuſion can poſſibly attend the conſideration of time: becauſe, from the evidence of Mr. Serjeant Shepherd, there could be no interval. It was all in a moment. He ſaw Lord Thanet ſitting down; he roſe, and ſtood with his face to the Judges; and then the confuſion began. But, at this time, I engage to prove moſt poſitively by many witneſſes, that Mr. Ferguſſon was in his place at the bar, that he was forced upon the table in conſequence of the tumult *after Lord Thanet had been knocked down*, and that he had NO STICK. This, indeed, is inconteſtibly eſtabliſhed by the evidence of Mr. Juſtice Heath, who ſaw him in that ſituation till he removed his eyes from him to the ſcene of confuſion, which he could not poſſibly have done if the confuſion had not become general whilſt Mr. Ferguſſon remained in his place; and ſo far was he from ſeeking to mix himſelf with the riot which the officers were occaſioning, that when Sir Francis Burdett, a gentleman poſſeſſed both of ſtrength and ſpirit (if a reſcue had been the object), was coming haſtily acroſs the table, from ſeeing the ſituation Lord Thanet was placed in, Mr. Ferguſſon, knowing that it would only tend to embroil inſtead of abating the confuſion, took hold of him to prevent him, carried him bodily towards the Judges, deſired the officers to be quiet, and, addreſſing the Court, ſaid publicly, and in his place, "My Lord, it is the officers who are making all this diſturb-"ance."

What, then, is to be ſaid for this Mr. Rivett, who ſwore that he never ſaw Lord Thanet till *after* his conflict with Mr. Ferguſſon on the table, although Mr. Ferguſſon will appear to have at this time been in his place? Mr. Smith was as near Lord Thanet as I am now, when Rivett ruſhed by him, and attacked him, Mr. Ferguſſon being ſtill in his ſtation at the bar.

Gentlemen, he ſaid farther, in his croſs-examination, that "*he ſtruck Lord Thanet ſeveral blows; that Lord Thanet de-*"*fired him to deſiſt, but that he had ſtruck him once or twice* "*afterwards.*" This was after Mr. Ferguſſon had gone acroſs towards the Judges; ſo that the ſcene he deſcribes, as relative to Lord Thanet, is not immediately upon his firſt coming into Court, but afterwards, when, having gone out of his courſe towards the priſoner from the reſiſtance he had met with in the paſſage towards him, he was obſtructed by Mr. Ferguſſon at the table: whereas all the witneſſes agree in placing Lord Thanet in the Solicitors' box, the very paſſage which Rivett ſtates himſelf to have left in conſequence of reſiſtance; and therefore he muſt have paſſed Lord Thanet, in

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the Solicitors' box, *before* he could have approached Mr. Fergusson at the table; and if he met with any blows or interruption from him at all, he muſt have met with them *immediately upon his entering the Court*; for Mr. Serjeant Shepherd's evidence eſtabliſhes, that at that period violence muſt have been uſed on Lord Thanet, as he was in an attitude of defence. Rivett further ſaid, that "*Lord Thanet had nothing to defend himſelf "againſt his blows,*" though Serjeant Shepherd ſaw and deſcribed him with a ſtick; and that "*he ſaw no blows ſtruck "by any body but himſelf.*" What then, is the caſe, as it ſtands upon Rivett's evidence? That no blows were ſtruck but his own; though a Learned Judge has ſworn to having ſeen many ſtruck, and upon many perſons; that he received no blows from Mr. Thompſon—none from Mr. O'Bryen—none from Mr. Fergusſon—none from any of the Defendants but Lord Thanet, nor from any other perſon in the Court. It is for you to ſay, Gentlemen, whether this ſtatement be poſſibly conſiſtent with a wide-ſpread conſpiracy to reſcue a priſoner by violence, of which the Defendants were at the head.

Sir Edward Knatchbull ſaw no blow given to Rivett. He ſaid, "*I can by no means ſpeak poſitively; but it appeared to "me, that when ſomebody was endeavouring to keep Rivett "back,* HE *ſtruck Lord Thanet with his fiſt. I ſaw no blow "given to Rivett.*" So that Sir Edward Knatchbull's evidence, inſtead of confirming Rivett's ſtory, mainly and importantly contradicts it.

Mr. Watſon, the gaoler, was next examined. He remembers the directions given him, not to diſcharge the priſoner, which I will not detain you with; and ſays, that "*after ſen-"tence was paſſed, ſome perſon ſaid to Mr. O'Connor, 'You "are acquitted—What do you ſtand there for?—Why don't "you jump over?' That Mr. O'Connor anſwered, 'Mr. Wat-"ſon ſays I am not to go;' but that, immediately afterwards, "he ſprang over,*" &c.—Thomas Adams, who was then Mr. Juſtice Buller's coachman, "*ſaw Lord Thanet with a ſtick in "his hand, and ſaw it lifted up.*" We had got rid of that ſtick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He deſcribes the ſtick as lifted up in this poſition, (*imitating the witneſs*); whereas it could be in no ſuch poſture, as you muſt be convinced of from the obſervations I have already made to you: but this man's evidence is very material in this reſpect, *viz.* that in deſcribing the aſſault of Rivett on Lord Thanet, he ſays, "*I "heard Lord Thanet ſay to him, 'What do you ſtrike me for?* "I HAVE NOT STRUCK YOU:"—an expreſſion of great importance in the mouth of ſuch a perſon as Lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but conſciouſneſs; and an expreſſion that

that I will confirm his having uſed by ſeveral of my own witneſſes.

Mr. Brooke, who was next called, ſays, he "*ſaw Mr. "O'Connor when the Jury returned. Mr. Ferguſſon held a "ſword or ſtick over the heads of the people.*" A ſword, or ſomething elſe, given to us in this confuſed manner, adds no force to the evidence; more eſpecially when, upon being aſked if he can ſwear with poſitiveneſs, he admits that he cannot.

Mr. Stafford was then examined, who ſays, "*he ſat under the "Jury-box, and could ſee Lord Thanet diſtinctly.*" I particularly aſked him that queſtion, and how far diſtant he was from him: he anſwered me, "*Not above two yards from me—three "times nearer than I am to you.*" He ſaw Lord Thanet, then, diſtinctly, at two yards diſtance, and from the beginning to the end of the confuſion; yet he ſwears, "*He did not obſerve "him engaged in any obſtruction.*" Afterwards, when the tumult became general, this witneſs has been deſcribed as brandiſhing a drawn ſword—no doubt, from a ſudden apprehenſion of danger, and to avert it from that quarter. Now, ſuppoſe Mr. Stafford had come down, out of mere curioſity, to Maidſtone, to hear the trial, and had been ſeen flouriſhing this drawn ſword in the midſt of the affray---what ſhould have prevented Mr. Rivett from conſidering this gentleman as the greateſt rioter of them all? Why might he not the rather have repreſented him as brandiſhing it to favour the eſcape of the priſoner? One cannot, indeed, imagine a caſe of greater cruelty and injuſtice; but what could have been his protection, if Mr. Ferguſſon can be convicted on the evidence you have heard? Was not his ſituation in Court, as Counſel at the Bar, equally reſpectable as that of the Clerk of the Arraigns? and is not the preſumption of an evil deſign againſt the dignity of the Court equally removed from both of them? Yet the one is only deſcribed as flouriſhing a ſmall ſtick; whilſt the other was ſo wielding his metallic tractor, that if he had not pleaded a flat bar to the aſſize in the manner he conducted this ſcimchion, the iſſue muſt have been blood. Mr. Garrow ſaid to him at the moment, "Take care that you do no miſchief;" and undoubtedly Mr. Stafford neither did nor intended any; but that makes the ſtronger for my argument, and ſhews how little is to be built upon appearances which grow out of a ſcene of tumult. The caſe for your conſideration ſeems, therefore, to be reduced to this---Whether you will believe the two Learned Judges, and the other reſpectable witneſſes? or, whether you will depend upon the ſingle and unſupported evidence by which violence has been imputed? Mr. Stafford, who was within two yards of Lord Thanet, has completely acquitted him; for had he been in the ſituation in which Rivett has placed him, what could poſſibly have prevented him from ſeeing

ing it? It was alſo ſworn by Rivett, that Mr. Ferguſſon had a ſtick; but upon appealing to Mr. Stafford's evidence, who ſat juſt oppoſite to him, we find that he had none; but that *he extended his arms ſeemingly to prevent perſons approaching that ſide of the Court.* Mr. Stafford admits, that when he ſaw Mr. Ferguſſon, it was in the midſt of confuſion; and it would be a harſh concluſion indeed that Mr. Ferguſſon is guilty of the conſpiracy charged on this record, becauſe, upon being forced out of his ſeat by the tumult which ſurrounded him, as I will ſhew you he was by ſeveral witneſſes, he had extended his arms in the manner you have heard. Mr. Stafford added, that the gaoler had hold of Mr. O'Connor's coat; that Mr. Ferguſſon forced himſelf between them, and that the gaoler ſtretched his hand behind Binns to take hold of the priſoner. This muſt be a miſtake; for Watſon ſat as where my learned friend Mr. Wood is at preſent *(pointing to him)*, and Mr. O'Connor ſtood as where Mr. Raine is now ſitting *(pointing to him)*; and at no part of the time is it even aſſerted that Mr. Ferguſſon was in the box of the Solicitors, and conſequently it was utterly impoſſible that he could have prevented the gaoler from keeping hold of the coat of the priſoner.

Mr. Clifford ſays, he ſat near the Marſhal. I thought he had ſaid that he ſat there as Marſhal; and, not knowing the perſon of the honourable Gentleman, I thought he had been the Marſhal of the Court. There was no new fact introduced by this witneſs.

Next came Mr. Cutbuſh. My Learned Friends appeared to be ſoon tired of his evidence; and it ſeemed to produce an emotion of ſurpriſe upon the Bench, that a witneſs, in ſuch a ſtage of the cauſe, ſhould give ſuch extraordinary teſtimony He ſaid, "*I ſaw Lord Thanet; he was two or three yards from "Mr. O'Connor. I obſerved nothing particular till I ſaw "Rivett ſtriking Lord Thanet on the back with a ſword.*" Now, as it is admitted on all hands that no ſuch thing ever happened, it affords another inſtance of the difficulty with which Juries can collect any evidence to be relied on in a ſcene of uproar and confuſion.

The evidence of the laſt witneſs, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the caſe of the Crown; and having accompanied this ſtatement with the obſervations which appeared to me to apply to it, let me ſuppoſe that my taſk was finiſhed; that I had nothing by which I could farther defend my clients; and that I were now to leave you to the Attorney-General's reply, and the aſſiſtance of the Court. Were this my ſituation, I ſhould ſit down confident that you could not pronounce a verdict againſt them, upon ſuch equivocal evidence, either

either honourable to yourſelves, or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with ſo much patience and attention; but I feel it to be my duty juſt to point out the inadequacy of the teſtimony.

The charge againſt the Defendants is, a conſpiracy to reſcue Mr. O'Connor from legal cuſtody, by tumult and violence;—all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwiſe relevant nor credible than as the means employed to effectuate that criminal purpoſe. Your belief of that purpoſe can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to eſtabliſh it, but the exiſtence of it is negatived by every principle which can guide the human judgment. No motive, either built upon fact, or flowing from reaſonable preſumption, has appeared: none has even been ſuggeſted: the object, thus purſued without an intereſt, is palpably uſeleſs and impracticable—detection and puniſhment inevitable—the crime, if committed, committed before the whole Court, its Judges, and Officers; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the teſtimony of the moſt reſpectable witneſſes, beſt ſituated to obſerve, and beſt qualified to judge of what was paſſing. I have therefore no more to aſk of you, Gentlemen, than a very ſhort audience, while I bring before you the Defendants' evidence.—My caſe is this:

It ſtands admitted, that the confuſion had not begun when the Jury returned with their verdict—that there was only a motion towards it when the officers were directed by the Court to be ſilent, and to ſtand back. The period, therefore, to be attended to, is the concluſion of the ſentence on O'Coigly, when the officers, from their own account of the tranſaction, believing that Mr. O'Connor intended to eſcape from them, and giving them credit that ſuch intention could not be fruſtrated without ſome violence and precipitation, ruſhed ſuddenly through the Solicitors' box, where they met indeed with reſiſtance, but a reſiſtance which was the natural conſequence of their own impetuoſity, and not the reſult of any conſpiracy to reſiſt the execution of the warrant.

To eſtabliſh this truth with poſitive certainty (if indeed it is not already manifeſt from the whole body of the proof), I ſhall produce, as my firſt witneſs, Mr. George Smith, whom I before named to you, and who was one of the firſt perſons in their way on their entering the Court. He ſat as near Lord Thanet as I now ſtand to where his Lordſhip ſits before you, and who, upon the principle of this proſecution, ſhould, above all others, have been made a Defendant; for he will admit freely, that he endeavoured to puſh them from him with his

elbow, when they preſſed upon him with great and ſudden violence: he will tell you that at this time Mr. Ferguſſon was in his place at the bar; that Lord Thanet was in the place where Serjeant Shepherd deſcribed him; that he was violently ſtruck, without having given the ſmalleſt provocation, without having made any motion, directly or indirectly, towards the reſcue of the priſoner, or even looked round at that time to the quarter where he ſtood: that Lord Thanet, in order to eſcape from this unprovoked violence, ſo far from approaching Mr. O'Connor, endeavoured to get nearer where the Counſel ſat, when Rivett, inſtead of advancing ſtraight forward in purſuit of his object, which was to arreſt the priſoner, levelled repeated blows at him, as he was obliged himſelf to admit, whilſt Lord Thanet lay back in the manner which has been ſo often deſcribed to you, protecting his head from the blows he was receiving.

In the ſame ſeat was Mr. Bainbridge, a gentleman educating for the Bar, a near relation of the Duke of St. Alban's, and a pupil, I believe, of my honourable and learned friend, Mr. Wood; a perſon who cannot reaſonably be ſuſpected of giving falſe teſtimony, to encourage violence and outrage againſt the laws of his country. Mr. Bainbridge will ſwear poſitively, that, when the officers came forward, Lord Thanet was in the Solicitors' box, and Mr. Ferguſſon in his place at the bar, where he remained till the witneſs ſaw him forced out of his place, and obliged to ſtand upon the table, *and that he had no ſtick.* What, then, becomes of Rivett's evidence, who ſwore he never ſaw Lord Thanet till after this period, although it is admitted that it muſt have been by the tumult, in which he falſely implicated his Lordſhip, that Mr. Ferguſſon was driven out of his place? This is abſolutely deciſive of the caſe:—for it will appear farther, that Mr. Ferguſſon continued in his place after the period when Lord Thanet was ſeen defending himſelf. It was rather inſinuated, than ſworn to diſtinctly, that there were gentlemen coming from the other end of the Court, as if to lend their aſſiſtance; but this operates directly in exculpation of Mr. Ferguſſon, who prevented Sir Francis Burdett from approaching to that quarter of the Court. Sir Francis was certainly not advancing for the purpoſe of riot, but to extricate Lord Thanet; yet Mr. Ferguſſon, leſt it ſhould add to the confuſion, publicly prevented him, under the eye of the whole Court.

The next witneſs I ſhall produce to you will be Mr. Charles Warren, ſon of the late highly celebrated phyſician---a moſt honourable young man, and who, I verily believe, will be as great an ornament to our profeſſion, as his father was to his. Mr. Warren was placed at the table, attending in his gown as Counſel, and had the moſt undeniable opportunity of ſeeing Mr. Ferguſſon,

Ferguſſon, who ſat near him, in his gown alſo. What Mr. Ferguſſon did cannot be matter of *judgment* or *opinion* in ſuch a witneſs, but matter of *certainty*: the conduct imputed, if it really exiſted, could neither be unobſerved nor forgotten; it was exactly the ſame as if I were at this moment to break out into madneſs, and inſult the Court.—In ſuch a caſe, would any of you qualify your evidence of ſuch a ſcene, paſſing before your eyes, with I *think*, or I *believe*?—No:—you would ſay at once, I SAW that gentleman hold up his fiſt, and inſult and threaten the Judges. Such extraordinary tranſactions addreſs themſelves directly to the *ſenſes*, and are not open to qualifications of opinion or belief. For the ſame reaſon, Mr. Smith, and Mr. Bainbridge, muſt both be perjured, if the evidence of Rivett be the truth; and Mr. Warren (ſubject to the very ſame obſervation) will ſwear poſitively that he ſaw Lord Thanet ſeverely aſſaulted, and THAT HE DID NOT STRIKE. Is this a mere negative, in oppoſition to Rivett's affirmative oath? Certainly not: for there are ſome negatives which abſolutely encounter the inconſiſtent affirmatives, and with equal force.

Let me ſuppoſe any man to ſay at this moment, "*Mr. Mackintoſh*" (who ſits cloſe by me) "*ſtruck Lord Thanet,*" who is juſt before me, whilſt I was ſpeaking to you, the Jury; and I were to anſwer that "*he did not,*"—that would, no doubt, be in *form* a negative propoſition; but it would comprehend a counter affirmative if I had ſeen Mr. Mackintoſh in ſuch a ſituation, relative to Lord Thanet, as that he was not near enough to ſtrike him, or that, if he had ſtruck him, I muſt inevitably have ſeen him. Upon this principle, which it is indeed pedantry to illuſtrate, becauſe common ſenſe obtrudes it upon the weakeſt, Mr. Warren will tell you POSITIVELY that Lord Thanet did *not* ſtrike Rivett; and that, at the time when this violence is imputed to him, Mr. Ferguſſon, who is reported to have begun the affray, and who had, it ſeems, a ſtick wrenched from him, was in his place at the bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, member of parliament for Northampton. He ſtood under the witneſs-box, which may be as in that corner, *(pointing to a corner of the Court)*, commanding a full and near view of every thing that could paſs; and he will confirm, in every particular, the evidence of Mr. Warren, Mr. Bainbridge, and Mr. Smith. I will alſo call Mr. Whitbread, who attended the trial, as a witneſs, who was near Mr. Sheridan, and, like him, did every thing in his power to preſerve the peace. Mr. Whitbread's ſituation I need hardly deſcribe to you. He is a man of immenſe fortune, acquired moſt honourably by his father in trade, and who poſſeſſes almoſt incalculable advantages,

advantages, which are inſeparably connected with the proſperity and ſecurity of this country: yet, from the mouth of this moſt unexceptionable witneſs, the moſt important parts of the evidence will receive the fulleſt confirmation. I ſhall alſo call Mr. Sheridan, who ſhewed his diſpoſition upon the occaſion by his conduct, which was noticed and approved of by the Judges. This will furniſh the defence of Lord Thanet aud Mr. Ferguſſon.

As to Mr. O'Brien, it is almoſt injurious to his intereſts to conſider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr. O'Connor. It has been ſaid, indeed, that he propoſed a bet to the officer on the exiſtence of the warrant, and that he afterwards whiſpered Mr. O'Connor; but at that period it could not relate to an eſcape. It has been ſaid, farther, that he was on the ſpot, and that Mr. O'Connor put his hand on his ſhoulder: but that was no act of Mr. O'Brien's; he neither touched him, nor uſed any effort to aſſiſt him—no violence or obſtruction is even imputed to him: even RIVETT HIMSELF has not attempted to ſay, that, in his progreſs towards the priſoner, he was inſulted by Mr. O'Brien, or that he even ſaw him.

I am not Counſel for Mr. Thompſon, or Mr. Browne; but I apprehend I have a right to call them as witneſſes, and upon that I ſhall preſently take the Court's opinion.—Rivett was deſired to look round, to identify Mr. Thompſon, but pointed to another gentleman who ſat next him, and who had no ſort of reſemblance to him in perſon. Mr. Thompſon, therefore, is not touched by any part of the proof; and nobody has ſaid a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman, in a grey coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cauſe has impoſed upon you; a cauſe which, independently of the Attorney-General's privilege to chooſe the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar, as an oppreſſion of the defendants, I acknowledge the advantages they have received from it, not only in the ſuperior learning and diſcrimination of the Court, but in the privilege of being tried by a Jury of Gentlemen aſſembled at a diſtance from all local prejudices, which has enabled them impartially to liſten to both ſides with ſuch equal and ſuch patient attention. I have yet another advantage from a trial in this place, which it is fit I ſhould advert to. It enables me to remind the noble and learned Chief Juſtice of a courſe of practice from which he has never deviated, and from whence my clients will receive moſt abundant advantage.

Throughout

Throughout the numerous criminal trials which it has fallen to my lot to ſee his Lordſhip judicially engaged in, I have obſerved this uniform courſe. Where the deciſions will not fit exactly the intereſt of the accuſed, and where Counſel, as far as profeſſional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the Noble Lord ſummons up all the vigour of his mind, and fills up the full ſcope of his authority, to prevent the violation of the law; becauſe the law is an abſtract and univerſal rule of action, the application of which can ſuffer no modification: but when the *law* is clear, and the queſtion only is, whether perſons accuſed of a breach of it are guilty or not guilty upon *evidence*, above all upon evidence which is contradictory—where teſtimony is oppoſed to teſtimony, and witneſs to witneſs, in ſuch confounding equality as that a Jury cannot with clearneſs arrive at the truth, I have a right to bring it to his Lordſhip's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to Juries, but even to interpoſe his opinion with the proſecuting Counſel. In a civil caſe, indeed, where one man aſſerts that to be his right or property which his opponent controverts, a Jury muſt give a verdict for the one or for the other, though the ſcales may appear to be equal. In ſuch caſes a Judge is frequently obliged to lament to Juries that they have a taſk impoſed upon them which neither the conſcience nor underſtanding of man can fulfil with ſatisfaction: but I ſpeak the language of his Lordſhip, and of all Judges, when I ſay, that *between the public and individuals* there can be no ſuch race for judgment. Far different is the character of Engliſh juſtice; and there occurs to my mind at this moment a recent and memorable example. Whilſt the attention of the Houſe of Commons was attracted to the great cauſe of humanity, in its proceedings upon the Abolition of the Slave-Trade, a caſe was brought for the conſideration of a Jury, ariſing out of the ill-treatment of a negro in an African ſhip. The captain upon his oath denied the alledged cruelty, and a bill of indictment for perjury was found by a Grand Jury againſt him. I conducted that proſecution at Guildhall, and eſtabliſhed the ill-treatment by ſeveral witneſſes; and although not one man, who was in the ſhip at the time, was called to contradict them, yet, on its only coming out, not from their admiſſion, but upon the evidence for the defendant, that they had held a different language in an alehouſe at Briſtol, Lord Kenyon interpoſed on my riſing to reply for the Crown. I had myſelf no doubt of the guilt of the defendant; but his Lordſhip, though without even expreſſing that he himſelf entertained a different opinion, declared that the intereſts of the Public never could be ſerved by a conviction on

ſuch contradictory evidence. We ought not, he ſaid, with ſuch materials, to leap in the dark to the concluſion of guilt. I acquieſced, as it was my duty; and the defendant, without any appeal to the Jury on the evidence, was acquitted.—I ſhould only weary you, Gentlemen, by a repetition of ſimilar inſtances which croud into my memory at this moment. I am ſure I could name above twenty, in this very place, upon proceedings for the obſtruction of officers in the execution of their duty (proceedings moſt important to the public), where the evidence has been very contradictory, and where the Noble and Learned Lord, not being able to detect perjury in the defence, has uniformly held this language to Juries, and even to the Counſel for proſecutions: "This is not a caſe for conviction; "the defendant *may* be guilty, but there is not a ſufficient "preponderation in the evidence to pronounce a penal judg-"ment."

Theſe are the maxims, Gentlemen, which have given to Britiſh Courts of Juſtice their value in the country, and with mankind. Theſe are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the ſame time the ſting of this caſe, as it deeply enhances the guilt of him who would diſturb the adminiſtration of ſuch an admirable juriſprudence. But, if the Courts of England are, on this very account, ſo juſtly popular and eſtimable; if they have been, through ages after ages, the ſource of public glory and of private happineſs, *why is this trial to furniſh an exception?* For myſelf, I can only ſay that I wiſh to do my duty, and nothing beyond it. Govern us who will, I deſire only to ſee my country proſperous, the laws faithfully adminiſtered, and the people happy and contented under them. Let England be ſecure, and I am ſure no ambition of mine ſhall ever diſturb her. I ſhould rather ſay, if I were once diſengaged from the duties which bind me to my profeſſion,

"Oh for a lodge in ſome vaſt wilderneſs,
"Some boundleſs contiguity of ſhade,
"Where rumour of oppreſſion and deceit,
"Of unſucceſsful or ſucceſsful war,
"Might never reach me more!"

To conclude—If you think my clients, or any of them, guilty, you are bound to convict them; but, if there ſhall be ultimately before you ſuch a caſe, upon evidence, as to juſtify the obſervations I have made upon the probabilities of the tranſaction, which probabilities are only the reſults of every man's experience in his paſſage through the world;—if you ſhould think that the appearances were ſo much againſt them as to have juſtified honourable perſons in deſcribing, as they have done,

done, their impreſſions at the moment, yet that the ſcene of confuſion was ſuch that you cannot arrive at a clear and ſubſtantial concluſion—you will acquit all the Defendants.

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[*The Attorney-General retired from the Court.*]

*Mr. Rous*—My Lord, I am of Counſel for Captain Browne.

*Lord Kenyon*—When the Attorney-General comes in, I will put the queſtion to him, whether he thinks there is ſufficient evidence againſt him or Mr. Thompſon?

[*The Attorney-General returned.*]

*Mr. Garrow*---My Lord, the Attorney-General has returned; if your Lordſhip pleaſes, I will put that queſtion to him.

*Mr. Attorney-General*---I underſtand, ſince I went out of Court (and I beg pardon of your Lordſhips for ſo doing), that ſomething has been ſaid relative to Mr. Thompſon and Mr. Gunter Browne. With reſpect to the former of thoſe gentlemen, undoubtedly, his perſon having been miſtaken here in Court, I ſhould think it extremely improper that I ſhould withhold from theſe Defendants the benefit of his teſtimony. With reſpect to Mr. Gunter Browne, I think there is ſome evidence againſt him, if I were ſtruggling in this caſe, in a way in which I am perfectly ſure your Lordſhip knows the Attorney-General never does ſtruggle, for a conviction; but I am very ready fairly to ſay, I ſhould act very improperly if I ſhewed any inclination to convict at all; and, therefore, I give up the proſecution with reſpect to him alſo.

*Lord Kenyon*---If you mean to avail yourſelf of their teſtimony, now is the time.

*Mr. Rous*---Mr. Gunter Browne is confined to a bed of ſickneſs.

*Lord Kenyon*---Gentlemen of the Jury, as far I can recollect the evidence, there is not ſufficient evidence to call upon theſe Gentlemen for their defence; if you think ſo, you will acquit them.

MR. BROWNE, *Not Guilty.*

MR. THOMPSON, *Not Guilty.*

*EVIDENCE*

## *EVIDENCE FOR THE DEFENDANTS.*

*Mr. George Smith ſworn.—Examined by Mr. Gibbs.*

*Q.* You were preſent at this trial?

*A.* I was.

*Q.* The row in which the Solicitors ſat repreſents that where we are now ſitting, and the Counſel before us?

*A.* It does.

*Q.* And the place in which the priſoners ſtand was behind?

*A.* Yes.

*Q.* In what part of the Court were you?

*A.* Almoſt during the whole of the trial I ſat in the Solicitors' ſeat.

*Q.* Are you at the bar?

*A.* I am.

*Q.* I believe the priſoners ſtood in the place allotted for them, three in the front, and two behind?

*A.* Exactly.

*Q.* Who were the three in front?

*A.* Mr. O'Coigly, Mr. Binns, and Mr. O'Connor; Mr. O'Connor was on the left as he looked at the Judges, and on the right as they looked at him; Mr. Binns in the middle, and Mr. O'Coigly next the gaoler; my ſeat was directly under the gaoler, at the end of the ſeat.

*Q.* Do you remember the time when the verdict was brought in?

*A.* Perfectly.

*Q.* Did you obſerve any thing happen at that time?

*A.* I recollect that Mr. O'Connor put his leg over the bar, and there was a preſs behind me, but a very trifling one, to get at him.

*Q.* This was before ſentence was pronounced?

*A.* Before ſentence was pronounced.

*Q.* Did that ceaſe?

*A.* Yes: ſilence was called, and that diſturbance ceaſed. The Judge then proceeded to pronounce ſentence; I was at that time ſitting, as I have deſcribed, at the end of the ſeat directly under the gaoler; and I leaned againſt a projecting deſk, looking up at O'Coigly during the whole of the ſentence, ſo that my back was to the Bow-ſtreet officers: that inſtant that the Judge concluded his ſentence, Mr. O'Connor put his leg over the bar, and the gaoler caught hold of his coat.

*Q.* At this time did you obſerve where Lord Thanet ſat?

*A.* At

*A.* At that particular moment I cannot ſay I ſaw my Lord Thanet, but I know that he and Mr. Brown were both ſitting on the Solicitors' ſeat, within one of me.

*Q.* Where was Mr. Fergusſon at this time?

*A.* I do not know; I did not obſerve him at that time.

*Q.* You were proceeding to ſtate what paſſed after the ſentence was pronounced?

*A.* At the ſame moment that Mr. O'Connor put his leg over the bar, before I had recovered myſelf from the leaning poſition in which I ſat, one of the Bow-ſtreet officers, I am not ſure whether it was Rivett or Fugion, *ſet his foot upon my back.* I immediately ſtarted up and drove the man off, and aſked him what he meant.

*Q.* How did you drive him off?

*A.* With my elbow, and by ſtarting up.

*Q.* What was his anſwer?

*A.* *He damned me,* and told me he had buſineſs, and would preſs on.

*Q.* Was there good room for him to get by, or was this a narrow place?

*A.* It was ſo narrow that it was impoſſible two people ſhould paſs without contrivance; a ſhort ſtruggle followed between the officers and myſelf, for there were ſeveral people who were preſſing behind, and I could not get out of the ſeat where I was without making that reſiſtance.

*Q.* How did you get out at laſt?

*A.* At laſt I ſtruggled a great while with my elbows to make room for myſelf; I got up, ſtepped upon the diviſion between the Solicitors' and the Counſels' ſeats, and from thence to the table; I then turned round immediately, and I then ſaw the ſame man preſſing upon my Lord Thanet, in the ſame way in which he had been preſſing upon me.

*Q.* You ſaid Lord Thanet and Mr. Gunter Browne were within one of you?

*A.* Yes.

*Q.* Did you obſerve this immediately upon your extricating yourſelf?

*A.* *The inſtant I extricated myſelf I turned round and ſaw a man preſſing upon Lord Thanet,* with this difference, that when I reſiſted him, I did not obſerve that he had any ſtaff or ſtick, but when I ſaw him with Lord Thanet *he was ſtriking Lord Thanet with a ſtick,* but what the ſtick was I cannot ſay; Lord Thanet ſtood with a ſhort ſtick in both his hands, dodging with his ſtick, and receiving the blows of the Bow-ſtreet officer upon that ſtick.

*Q.* Lord Thanet was guarding himſelf, with his hands up, from Rivett's blows?

*A.* Exactly ſo.



*Q.* You

Q. You do not know which officer it was?

A. I am not certain, I think it was Rivett.

Q. Before this happened, Rivett had had a ſtruggle with him?

A. I had had a ſtruggle with Rivett in the firſt inſtance; and I ſhould ſtate, that during that ſtruggle Mr. O'Connor, who had endeavoured to get away, had effected his eſcape from the gaoler; and the conſequence was, that the people preſſed forward from the oppoſite end of the bench, to prevent Mr. O'Connor from effecting his eſcape; by which means every perſon who ſat in that narrow ſeat, was placed, if I may ſay ſo, between two fires, for the Bow-ſtreet officers were preſſing up from one ſide, and the crowd were preſſing up from the other ſide.

Q. You ſay, as ſoon as you got from Rivett, you ſaw him *inſtantly engaged in this way with Lord Thanet?*

A. Yes.

Q. *Could Rivett, in the interval between the ſtruggle with you and the ſtruggle you inſtantly ſaw him have with Lord Thanet, have got over to the Counſels' table and had a conteſt with a man who had a ſtick, and taken that ſtick from him?*

A. *Impoſſible; I think ſo at leaſt; the interval was no longer than that which elapſed from my getting from the ſeat to the diviſion, and from thence to the table.*

Q. Which you did as expeditiouſly as poſſible?

A. Certainly; for I felt myſelf in danger.

Q. When you ſay impoſſible, I need not aſk you whether you ſaw the thing happen?

A. Certainly not.

Q. *Had you your gown and wig on?*

A. *I had.* Very ſhortly after I got upon the table, a man took up one of the ſwords, and drew it, and flouriſhed it about over the heads of the people; very ſhortly afterwards I ſaw this ſword coming in a direction immediately to my own head; I avoided the blow by ſpringing off the table into the paſſage leading into the ſtreet.

Q. *Did you at any time ſee Lord Thanet ſtrike this officer, let him be whom he may?*

A. *I never ſaw Lord Thanet in any ſituation but acting upon the defenſive.*

Q. *If Lord Thanet had ſtruck the officer, do you think you muſt have ſeen it?*

A. *Certainly, during the time I had my eyes upon him.*

Q. *I think you told me you ſaw the officer firſt preſſing by Lord Thanet, and then ſtriking him?*

A. *Yes.*

Q. *And if he had ſtruck the officer, you muſt have ſeen him?*

A. *Certainly, at that time.*

*Q.* Do you remember Lord Romney coming down from the Bench?

*A.* Perfectly well.

*Q.* Do you recollect, upon Lord Romney's saying the prisoner was discharged, or acquitted, any person making an observation to him?

*A.* I remember there was an altercation between Lord Romney and myself, in consequence of his saying that the prisoners were not acquitted.

*Q.* There was a misapprehension between the words acquitted and discharged?

*A.* I apprehend so.

*Q.* However, you were the person that had the conversation with him?

*A.* Yes.

*Cross-examined by Mr. Attorney-General.*

*Q.* You insisted that they were acquitted, and Lord Romney insisted that they were not acquitted?

*A.* Exactly so.

*Jury.* I wish to ask whether you left the Court during the riot?

*A.* No, I did not; I jumped off the table in consequence of a blow that I saw coming at my head, and I shortly after returned to the table again.

*Q.* Did you observe Lord Thanet leave the Solicitors' box?

*A.* No, I did not.

*Q.* Do you know whether he did, or not, leave the Solicitors' box?

*A.* I cannot say, for the riot lasted a very short time after I had left the table.

*Lord Kenyon.* Was the blow aimed at your head?

*A.* By no means; it appeared to me that all the blows struck by that sword were struck by a man that did not know what he was about.

*Q.* Were there any wounds?

*A.* I heard there were, but I do not know of any.

*Mr. Bainbridge sworn, examined by Mr. Best.*

*Q.* You are a student of the law?

*A.* I am.

*Q.* Were you in Court during the trials at Maidstone?

*A.* I was.

*Q.* In what part of the Court did you sit at the time of the riot?

*A.* When the Jury returned, I left my place at the table, and went

went to the place where the Solicitors of the defendants ſat, to ſpeak to Mr. Ferguſſon.

Q. *Did you obſerve Mr. Ferguſſon during this time?*

A. *Mr. Ferguſſon ſat directly before me.*

Q. *Did you obſerve Lord Thanet?*

A. *Lord Thanet ſat on my right hand, cloſe to me.*

Q. *So that you had a complete opportunity of obſerving them?*

A. *I had a complete opportunity till the fray began.*

Q. Do you recollect the Bow-ſtreet officers coming in?

A. I remember obſerving the Bow-ſtreet officers ſtanding on the right hand ſide of the dock.

Q. Do you remember ſeeing thoſe Bow-ſtreet officers at the time the Jury pronounced their verdict?

A. I did.

Q. What did you obſerve them doing at this time?

A. I obſerved two ſtanding with their eyes fixed upon Mr. O'Connor, as the impreſſion ſtruck me.

Q. Do you recollect them after the ſentence was pronounced?

A. Yes I do.

Q. What did you ſee them do at that time?

A. I obſerved one, whom I had from obſervation upon the trial known to be Rivett, put his knee upon the bench that came over into the Solicitors' ſeat, and get over, and preſs directly forward.

Q. You ſay he preſſed forward: in what direction?

A. He preſſed directly on to the bench where the Solicitors for the Defendants had ſat, and the Counſel for the Defendants had ſat.

Q. Where was Lord Thanet at this time?

A. My Lord Thanet was on the right hand of me, and in the place where the Solicitor for Mr. O'Connor had ſat, I believe moſt part of the day.

Q. *Where was Mr. Ferguſſon then?*

A. *Directly before me,* IN HIS PLACE.

Q. Was Mr. Ferguſſon at that time in the Solicitors' place, or the place appropriated for the Counſel?

A. Mr. Ferguſſon was IN HIS OWN PLACE, and the place which he had kept the whole day.

Q. Did you ſee the Bow-ſtreet officers attempt to paſs Lord Thanet?

A. I ſaw the Bow-ſtreet officers attempt to paſs Lord Thanet; and Lord Thanet, upon being preſſed upon, moved upwards, as if to prevent being overpowered or cruſhed, and got upon his legs.

Q. *Did Lord Thanet do any thing to obſtruct this officer?*

A. *To my opinion, nothing in the world.*

Q. I think you ſay, on the contrary, he moved up?

A. He endeavoured to get upon his legs; for the preſſure of the

the people upon him was ſuch, that, if he had not got up, he muſt have been totally knocked under the bench.

Q. *At this time did you ſee whether Lord Thanet ſtruck this Bow-ſtreet officer, or not?*

A. *I never obſerved Lord Thanet ſtrike the Bow-ſtreet officer, or any body elſe.*

Q. *From the ſituation in which you were at this time, if he had ſtruck him, do you think you muſt have ſeen him?*

A. *Certainly I muſt.*

Q. *If Lord Thanet, at this time, had been taking an active part in the riot, muſt you have ſeen that alſo?*

A. *I muſt have obſerved that too.*

Q. *Did Lord Thanet do any thing to aid the eſcape of Mr. O'Connor, or add to the tumult which then prevailed in Court?*

A. *Nothing in the world, that I ſaw.*

Q. Did you obſerve Mr. Ferguſſon at this time?

A. I did.

Q. Now, I will aſk you if Mr. Ferguſſon ſtruck any body?

A. I never ſaw Mr. Ferguſſon ſtrike any body; and, if he had ſtruck any body, I think I muſt have ſeen it.

Q. *Did it appear to you that Mr. Ferguſſon encouraged Mr. O'Connor, or at all favoured him in his eſcape?*

A. *Not the leaſt, quite the contrary.*

Q. *Did you obſerve whether Mr. Ferguſſon had any ſtick?*

A. *I obſerved no ſtick whatever.*

Q. *If Mr. Ferguſſon had at this time been brandiſhing a ſtick, do you think you muſt have ſeen it?*

A. *I muſt certainly have ſeen it, from the ſituation I was in.*

Q. *During this time did Mr. Ferguſſon continue in the ſame ſituation in which he was?*

A. *He continued in his ſeat till he was preſſed upon, and the whole was a ſcene of confuſion.*

Q. Did it then appear to you that Mr. Ferguſſon only left his ſeat in conſequence of the preſſure upon him?

A. That was the only cauſe, as it ſtruck me.

Q. *Do you recollect ſeeing Rivett engaged with Lord Thanet?*

A. *I do; he appeared to me to be ſtriking him, and trying to beat him down; in ſhort, he was in the act of offence, with his hand uplifted, as it appeared to me.*

Q. Do you recollect Mr. Ferguſſon ſaying or doing any thing at that time?

A. I remember Mr. Ferguſſon aſking him to deſiſt, and aſking him if he knew who he was ſtriking.

Q. Did he give any anſwer to that?

A. He, I think, made uſe of words to this effect: "I neither know nor care." Upon which Mr. Ferguſſon ſaid, "That is Lord Thanet, I inſiſt upon your not ſtriking him."

Q. Do

*Q.* Do you recollect whether Rivett had a conteſt with Mr. Ferguſſon before he got to Lord Thanet?

*A.* Not to my obſervation; I had ſeen none.

*Q.* From the ſituation in which Mr. Ferguſſon was, could Rivett have got a ſtick out of Mr. Ferguſſon's hand?

*A.* I think, if he had had a ſtick in his hand, he might; I obſerved no ſtick in his hand.

*Q.* Could he have ſtruck him, and wreſted the ſtick out of his hand, without your ſeeing it?

*A.* I think not.

*Q.* You was there during the whole of this tumult?

*A.* I was in Court during the whole of the trial.

*Q.* Was Mr. Ferguſſon any part of that time in the place allotted for the Solicitors?

*A.* Never.

*Q.* Was he ever nearer to Mr. O'Connor than the place for the Counſel?

*A.* Never; I was between them.

*Q.* Where did he go, when he quitted that place?

*A.* Towards the Judges, and away from the tumult.

*Q. During the whole of this time, did Mr. Ferguſſon at all appear to encourage the tumult?*

A. *Quite the contrary, I think.*

*Croſs-examined by Mr. Law.*

*Q.* You have ſaid that Mr. Ferguſſon, ſo far from encouraging this tumult, acted quite the contrary?

*A.* Yes.

*Q.* Am I to underſtand you, that he endeavoured to diſſuade them from riot?

A. *I heard him ſay to Mr. O'Connor, "Be quiet, and keep your place; nothing can hurt you."*

*Q.* Was that after the acquittal?

*A.* It was after the verdict of acquittal had been given, and before the ſentence was paſſed upon O'Coigly.

*Q.* But after the ſentence was pronounced, did you obſerve Mr. Ferguſſon doing any thing that was quite the contrary?

*A.* He ſeemed to ſay, "Be quiet;" and, from Mr. Ferguſſon deſiring him to keep his place, and having complained to the Court of a perſon that wiſhed to make a tumult, he appeared to me to be a perſon who wiſhed to keep every thing quiet and in order.

*Q.* You have told us, that, during the whole day, Mr. Ferguſſon kept the ſame place?

*A.* As to the ſame place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr. Plumer in the morning; but what I mean is, that he never moved out of the place where the Counſel ſat.

*Q.* Then

*Q.* Then he muſt have been under your own obſervation the whole of the day?

*A.* Yes.

*Q.* Did he never appear to be upon the table in the courſe of that day?

*A.* While the Jury were retired, he went acroſs the table, and, I believe, went to ſpeak to ſomebody near the witneſſes' box; but at that time people were converſing and walking about, but there was no idea of a riot then.

*Q.* Will you ſay, after the verdict was brought in, he was never upon the table?

A. *He was never upon the table that I know of, till he was preſſed upon by the Bow-ſtreet officers.*

*Q.* Did you, during the day, ſee a ſtick in his hand, or that he had not had a ſtick?

*A.* I will ſwear that I did not ſee a ſtick in his hand.

*Q.* And you had him ſo much under your obſervation, that you muſt have ſeen it?

*A.* As much as a perſon could do, ſitting in a Court of Juſtice; it was quite ridiculous to ſuppoſe he had a ſtick in his hand.

*Q.* Was you a witneſs, or concerned in that trial?

*A.* No: I went from mere curioſity.

*Q.* You did not go with Mr. Ferguſſon?

*A.* No.

*Q.* And you will ſwear that he never had a ſtick in his hand?

*A.* I will ſwear I did not ſee a ſtick in his hand; and I think I muſt have ſeen it, if he had.

*Q.* If you had him conſtantly in view, you muſt?

*A.* It cannot be ſuppoſed that I had my eyes upon him for fourteen hours.

*Q.* WILL YOU VENTURE TO SWEAR, THAT DURING THE RIOT HE HAD NO STICK?

*A.* I WILL.

*Jury*—Did Lord Thanet leave the Court during the riot?

*A.* Lord Thanet moved, as Mr. Ferguſſon did; upon being preſſed upon, he got up upon the bench; and that, when he moved up, Rivett was above him, and trying to ſtrike him; and Mr. Ferguſſon then ſaid, "Who are you ſtriking, Sir?"

*Jury*—Whether he ſaw Lord Thanet, during any part of the period, near the the wicket-gate that leads to the narrow ſtreet?

*A.* I ſaw Lord Thanet, I think, during the whole riot; and I think, inſtead of being there, he went, when he did move, quite the contrary way, and not at all towards the gate.

*Mr. Juſtice Lawrence*—From Mr. Ferguſſon complaining

of

of a tumult, it ſeemed as if he wiſhed to keep every thing in order; who was the perſon that he complained of?

*A.* Rivett.

*Q.* That was before the ſentence was paſſed?

*A.* Yes.

*Q.* How far was Rivett from Mr. Ferguſſon at that time?

*A.* I think he muſt have been about three yards.

*Q.* At that time was he not making uſe of this motion, *(deſcribing it)*, and ſay, "Keep back, where are you going?"

*A.* Yes; and I think Mr. Juſtice Buller then ſaid, "What is the matter?" Mr. Ferguſſon then ſaid, "Here is a perſon making a noiſe, and will force himſelf into the Court." Mr. Juſtice Buller then ſaid, "What do you mean, Sir?" He then ſaid, "My Lord, I have a warrant againſt Mr. O'Connor." He then told him to keep back.

*Mr. Warren ſworn, examined by Mr. Mackintoſh.*

*Q.* I believe you was preſent at the trials for high treaſon at Maidſtone?

*A.* I was.

*Q.* Was you preſent the ſecond day of thoſe trials?

*A.* I was.

*Q.* Where did you ſit during the evening of the ſecond day?

*A.* Juſt by the witneſs-box, oppoſite to the Jury.

*Q.* After ſentence was pronounced upon O'Coigly, tell us what you obſerved of the confuſion that aroſe in the Court?

*A.* After the ſentence of death was pronounced upon O'Coigly, the firſt part of the affray that I recollect was this: Mr. O'Connor endeavoured to get out of the dock: he got almoſt out of the dock, on the left ſide; the gaoler, who was on the other ſide of the dock, reached acroſs the dock, and caught him by the coat: he detained him for a very ſhort ſpace of time in that ſituation; the coat tore, or ſlipped through his hands.

*Q. At that time, when the gaoler had hold of Mr. O'Connor's coat, did any body reach or ſtep backwards between them?*

A. *Nobody.*

*Q. Then Mr. Ferguſſon did not?*

A. *Certainly he did not.*—Mr. O'Connor got away, either from the coat being torn, or ſlipping through the gaoler's hands; he got down upon the ground; he ſoon mixed with the crowd, and I loſt ſight of him: as ſoon as he endeavoured at firſt to get away, two perſons, who had before appeared to be officers from Bow-ſtreet, with ſeveral others, ruſhed forward to apprehend him. In their endeavour to apprehend him, the firſt perſon upon whom they appeared to ruſh with any great violence,

violence, was Mr. George Smith, who was ſitting at the end of the ſeat of the Solicitors for the priſoners: he was forced from thence, and came to the place where I was ſitting. The next perſon that I obſerved forced from his ſeat, was Mr. Dallas, one of the Counſel for the priſoners; he came likewiſe and ſat near me; the officers ſtill ruſhed on towards the end of the Counſels' ſeat, and of the Solicitors' ſeat. At the farther end of the Counſels' ſeat, or near the end of it, Mr. Ferguſſon was ſitting, to the beſt of my recollection.

Q. *Had he a ſtick in his hand?*

A. *No ſtick that I ſaw.*

Q. *Had you your eye upon him; and if he had, muſt you have ſeen him?*

A. *He is an acquaintance of mine, and he was in his profeſſional dreſs; and if he had, I think I could not have miſtaken it:* Lord Thanet was ſitting upon the Solicitors' bench, almoſt immediately behind Mr. Ferguſſon. By this time the confuſion had become general, and a number of people had got upon the table, from all parts of the Court.

Q. Whether, if Mr. Ferguſſon had brandiſhed a ſtick, or preſented it to Rivett, muſt you have ſeen it?

A. I certainly muſt.

Q. I need not aſk you if you did ſee it?

A. I did not ſee it; Mr. Ferguſſon had riſen up, and Lord Thanet had riſen up.

Q. Suppoſing it poſſible that a ſtick had been in Mr. Ferguſſon's hands, and it had eſcaped your eye, do you think it poſſible, from time and place, that Rivett could have wrenched it out of his hands before he attacked Lord Thanet?

A. I do not think it poſſible he could have a ſtick of any ſort.

Q. Was Lord Thanet nearer to Rivett than Mr. Ferguſſon?

A. I think he was rather; one of the officers, but I do not know which, I do not know their perſons, *preſſed very rudely, as it appeared to me, upon Mr. Ferguſſon; I believe that Mr. Ferguſſon might ſhake his ſhoulder when he felt the man's hand upon it; that is all the reſiſtance I ſaw made on the part of Mr. Ferguſſon.*

Q. *What did you ſee paſs between theſe officers and Lord Thanet?*

A. *The firſt thing I obſerved particularly of Lord Thanet was, that he was lying almoſt down upon his back upon the table, with a ſmall ſtick or cane, which he held in both hands over his head or face, in this manner:* one of the officers was ſtriking him with a ſtick, and Lord Thanet endeavoured, with very little ſucceſs, to defend himſelf by the uſe of this ſtick, which he held in both his hands.

Q. *Now, before that period of which you laſt ſpoke, did you*

*obſerve Lord Thanet give a blow, or any provocation, to this officer?*

A. *I never ſaw him give a blow; I never ſaw him give any provocation;* I never ſaw him in any other way than I have mentioned, till he left his ſeat; how he left his ſeat I cannot tell; they had riſen up upon their ſeats; when they were preſſed upon, they roſe towards the left hand ſide of the priſoner, as the priſoner faced the Judges.

Q. Did they go out of ſight?

*A.* No.

Q. *Did they go off that table?*

A. *They were not upon that table; Mr. Ferguſſon was upon the table afterwards, but not on the table at any time that I have yet ſpoke to*—Lord Thanet was then lying upon the table. I am not able to ſay how Lord Thanet got from that ſituation; I do not know that I took particular notice of what paſſed after, with reſpect to Lord Thanet; Mr. O'Connor was brought into Court, and then the riot ceaſed.

Q. Did you take any particular notice of Mr. Ferguſſon, between the laſt time you have been ſpeaking of, and the time of Mr. O'Connor being brought into Court?

*A.* No: I do not recollect any thing more.

Q. I need not aſk you if you ſaw Mr. Ferguſſon brandiſh a ſword?

*A.* No.

Q. Did you ſee Mr. Ferguſſon after the ſentence of death was paſſed, go back to his old place?

*A.* I did not.

Q. Were your eyes fixed upon that part of the Court?

*A.* They were, moſt particularly: I was placed in a ſituation in which I could very well ſee.

Q. So that it was impoſſible for Mr. Ferguſſon to have gone backwards from his ſeat, without having ſtruck your eye?

*A.* I think it was impoſſible.

Q. *Did you ſee Mr. Ferguſſon upon the table, before Lord Thanet was beat by Rivett?*

A. *I did not.*

*Mr. Juſtice Lawrence*—In what part of the Court was you?

*A.* Under the witneſs-box; I roſe from thence, and got upon the table as other people did.

*Mr. Mackintoſh*—Did you ſee Lord Thanet or Mr. Ferguſſon take any part in any thing that had the appearance of diſturbance or riot?

*A.* No; I did not. I ſaw Lord Thanet defend himſelf; and I have ſtated, that I did not ſee Mr. Ferguſſon do any act at all, except ſhaking that man's hand off his ſhoulder.

Q. Do

*Q.* Do you remember Mr. Dallas quitting his place before he began to addreſs the Jury?

*A.* I do, perfectly.

*Q.* And Mr. Plumer alſo, I believe?

*A.* I do not.

*Q.* Do you recollect Mr. Ferguſſon leaving his own place, in conſequence of that?

*A.* I am rather inclined to think it was ſo; but I cannot ſwear to that.

*Q.* I underſtand you to ſwear moſt poſitively that Mr. Ferguſſon never interpoſed between the jailor and Mr. O'Connor?

*A.* I do moſt poſitively ſwear I do not think he did, and if he had, I think I muſt have ſeen it.

*Croſs-examined by Mr. Garrow.*

*Q.* The dock or bar, by which the Bow-ſtreet officers were placed, could only occupy five or ſix perſons?

*A.* No more.

*Q.* Only the jailor and the priſoners?

*A.* It might be three yards long, perhaps.

*Q.* You ſtated that after the ſentence of death had been paſſed, and Mr. O'Connor had been left upon the floor, the officer preſſed forward to apprehend him—What induced you to think theſe were officers ruſhing forwards for that purpoſe?

*A.* I took them to be the perſons who had produced the warrant in Court. When they had forced themſelves up to the end of the Solicitors' ſeat, Mr. Ferguſſon ſaid, I think, "here are two men obtruding themſelves between the priſoners and the jury." Mr. Juſtice Buller ſaid, "What are you about; ſit down;" and one of them produced a paper, ſaying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treaſon againſt Mr. O'Connor, or ſomething to that effect; and therefore I ſuppoſed them to be Bow-ſtreet officers, or officers of juſtice.

*Q.* I do not know whether you happened to be preſent in Court when thoſe two witneſſes were examined as witneſſes to prove the fact of apprehending Mr. O'Connor at Margate?

*A.* I ſhould ſuppoſe I was in Court, but I am not certain.

*Q.* But before the judgment of death was paſſed, it is perfectly in your recollection, that one of thoſe perſons had hinted in Court, that they had a warrant for the purpoſe of apprehending Mr. O'Connor?

*A.* That was after the jury had returned their verdict, and before that verdict was pronounced.

*Q.* Do you know Mr. O'Brien?

*A.* I ſaw him the other day for the firſt time in my life.

*Q.* You did not know him at Maidſtone?

*A.* No; I did not.

*obſerve Lord Thanet give a blow, or any provocation, to this officer?*

A. *I never ſaw him give a blow; I never ſaw him give any provocation;* I never ſaw him in any other way than I have mentioned, till he left his ſeat; how he left his ſeat I cannot tell; they had riſen up upon their ſeats; when they were preſſed upon, they roſe towards the left hand ſide of the priſoner, as the priſoner faced the Judges.

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*A.* No; I did not. I ſaw Lord Thanet defend himſelf; and I have ſtated, that I did not ſee Mr. Ferguſſon do any act at all, except ſhaking that man's hand off his ſhoulder.

Q. Do

*Q.* Do you remember Mr. Dallas quitting his place before he began to addreſs the Jury?

*A.* I do, perfectly.

*Q.* And Mr. Plumer alſo, I believe?

*A.* I do not.

*Q.* Do you recollect Mr. Ferguſſon leaving his own place, in conſequence of that?

*A.* I am rather inclined to think it was ſo; but I cannot ſwear to that.

*Q.* I underſtand you to ſwear moſt poſitively that Mr. Ferguſſon never interpoſed between the jailor and Mr. O'Connor?

*A.* I do moſt poſitively ſwear I do not think he did, and if he had, I think I muſt have ſeen it.

*Croſs-examined by Mr. Garrow.*

*Q.* The dock or bar, by which the Bow-ſtreet officers were placed, could only occupy five or ſix perſons?

*A.* No more.

*Q.* Only the jailor and the priſoners?

*A.* It might be three yards long, perhaps.

*Q.* You ſtated that after the ſentence of death had been paſſed, and Mr. O'Connor had been left upon the floor, the officer preſſed forward to apprehend him—What induced you to think theſe were officers ruſhing forwards for that purpoſe?

*A.* I took them to be the perſons who had produced the warrant in Court. When they had forced themſelves up to the end of the Solicitors' ſeat, Mr. Ferguſſon ſaid, I think, "here are two men obtruding themſelves between the priſoners and the jury." Mr. Juſtice Buller ſaid, "What are you about; ſit down;" and one of them produced a paper, ſaying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treaſon againſt Mr. O'Connor, or ſomething to that effect; and therefore I ſuppoſed them to be Bow-ſtreet officers, or officers of juſtice.

*Q.* I do not know whether you happened to be preſent in Court when thoſe two witneſſes were examined as witneſſes to prove the fact of apprehending Mr. O'Connor at Margate?

*A.* I ſhould ſuppoſe I was in Court, but I am not certain.

*Q.* But before the judgment of death was paſſed, it is perfectly in your recollection, that one of thoſe perſons had hinted in Court, that they had a warrant for the purpoſe of apprehending Mr. O'Connor?

*A.* That was after the jury had returned their verdict, and before that verdict was pronounced.

*Q.* Do you know Mr. O'Brien?

*A.* I ſaw him the other day for the firſt time in my life.

*Q.* You did not know him at Maidſtone?

*A.* No; I did not.

*Mr. Maxwell ſworn, examined by Mr. Erſkine.*

*Q.* Was you in Court, at Maidſtone, during any part of the trial of Mr. O'Connor and others?

*A.* I was, frequently.

*Q.* Did you hear Mr. Juſtice Buller pronounce ſentence of death upon O'Coigly?

*A.* I did.

*Q.* In what part of the Court was you at that time?

*A.* At that time I was immediately to the left of the witneſs-box, rather farther from the Judge than the witneſs-box.

*Q.* Was you elevated above the Court?

*A.* I was elevated above the table where the Counſel ſat.

*Q.* Did that elevation and poſition give you a view of that part of the Court where the Bow-ſtreet officers entered, and where the Solicitors for the priſoner ſat?

*A.* That gave me a diſtinct view of that part of the Court.

*Q.* Do you remember when Mr. Juſtice Buller had finiſhed pronouncing ſentence upon Mr. O'Coigly—do you remember any perſons ruſhing forwards, as if to ſeize Mr. O'Connor?

*A.* I remember ſome of the Bow-ſtreet officers, among whom I knew Rivett and Fugion, ruſhed violently to that place where Mr. O'Connor was.

*Q.* At the time that thoſe two perſons, Rivett and Fugion, ruſhed forwards in the direction you have deſcribed, did you obſerve where Lord Thanet was?

*A.* I did; my Lord Thanet ſat at that time in the Solicitors' place.

*Q.* Did you obſerve where Mr. Ferguſſon was at the ſame time?

*A.* Mr. Ferguſſon ſat in his own place, where he had been as Counſel for ſome time, on the bench before the Solicitors' bench.

*Q.* Which of them was nearer to that ſide of the Court where the jury-box is, and where Mr. O'Connor was?

*A.* I think Lord Thanet was rather, perhaps, the neareſt of the two; but there was very little difference.

*Q.* Did you ſee any thing paſs between Rivett the officer, and Lord Thanet?

*A.* I did.

*Q.* *Deſcribe to my Lord and the Jury what you ſaw?*

*A.* *After Rivett had forcibly overturned and driven from their places thoſe who ſtood between him and Mr. O'Connor, he got to Lord Thanet, who was one of the neareſt.* Lord Thanet, when he was preſſed upon, got out of the place where he was, and went from the ſcene of tumult towards the table.

*Q.* Was that farther from the priſoners than he was before?

*A.* Con-

*A.* Conſiderably farther from the priſoners than when he was firſt preſſed upon.

Q. *When Lord Thanet retired in that manner out of the Solicitors' box, over towards the Counſels' table, did Rivett purſue his courſe on towards the priſoners in the line of the Solicitors' box, or what?*

A. *He followed Lord Thanet, and ſtruck him repeatedly.*

Q. *Had Lord Thanet ſtruck Rivett before he went over from the Solicitor's ſeat towards the table?*

A. *Lord Thanet never ſtruck Rivett before nor after that.*

Q. Had you ſuch a view of the ſituation in which Lord Thanet was placed, and what he did, as to ſwear merely to your opinion and belief, or do you ſwear it poſitively?

*A.* I had ſuch a view, that I ſwear it poſitively: by that time I had quitted the place where I was, and got nearer to Lord Thanet and the other perſons who were ſtruck.

Q. Were any other perſons ſtruck beſides Lord Thanet?

*A.* I ſaw ſeveral blows given, but I cannot ſay to whom, by the Bow-ſtreet officers and thoſe who followed them.

Q. Do you know whether Rivett ſtruck any perſon beſides Lord Thanet?

*A.* I do not poſitively know whether he ſtruck any perſon or not.

Q. *But you ſwear poſitively Lord Thanet did not ſtrike Rivett at all?*

A. *He did not; but merely put himſelf in a poſture of defence and lying back upon the table.*

Q. Had Lord Thanet a ſtick?

*A.* He had a ſmall ſtick; which he held up over his head to defend himſelf; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offenſively.

Q. Did you ſee Lord Thanet ſubſequent to the time that he was in that ſituation?

*A.* I did.

Q. You ſay that the officers, and particularly Rivett, ruſhed into the Court, and having paſſed, one or two that were before Lord Thanet attacked Lord Thanet; *what length of time might elapſe between Rivett firſt ruſhing in and the time he ſtruck Lord Thanet?*

A. *A very ſhort ſpace of time indeed.*

Q. *Was it poſſible that before Rivett ſtruck Lord Thanet he could have gone within the Counſels' place, where you have deſcribed Mr. Ferguſſon to be, and have wreſted a ſtick out of his hand before he came to Lord Thanet?*

A. *Rivett did not go to take a ſtick out of his hand, for he had no ſtick in his hand; he did not go up to Mr. Ferguſſon, but immediately went up to Lord Thanet and ſtruck him.*

Q. *If*

*Q. If Rivett ſhould have ſaid here, that he never ſaw Lord Thanet till after he had taken a ſtick from Mr. Fergusſon, from what you obſerved is that true or falſe?*

A. *I ſhould certainly ſay it were falſe, without any heſitation.*

Q. During the time that you thus obſerved Lord Thanet in the attitude of defence, retreating from the ſcene of tumult, and purſued by Rivett, where was Mr. Fergusſon?

A. He was in his place, and remained in his place till he was preſſed upon, and then he got out of the ſcene of tumult upon the table.

Q. Did you ſee him while he was in his ſeat, and did you ſee him move from his ſeat to the table by the preſſure that was upon him?

A. I did.

Q. *If, whilſt Mr. Fergusſon was in his ſeat, or if while he was preſſed upon when he roſe from his ſeat, if in either of theſe ſituations he had not only had a ſtick but had brandiſhed and flouriſhed that ſtick, I aſk, muſt you have ſeen it or not?*

A. *I muſt have ſeen it; he was ſo directly before me, that it is quite impoſſible but I ſhould have ſeen it;* I CAN SWEAR THAT MR. FERGUSSON HAD NOTHING IN HIS HAND, BUT A ROLL OF PAPER IN HIS RIGHT HAND.

Q. And was in his profeſſional dreſs?

A. He was.

Q. If Mr. Fergusſon had done any one act to encourage the tumult that was undoubtedly then exiſting, or done any one act inconſiſtent with his duty as Counſel, or committed any one act of indecency or turbulence, muſt you have ſeen it?

A. I muſt.

Q. Then let me aſk you, upon your ſolemn oath, did he do any ſuch thing?

A. He did not: on the contrary, he endeavoured to keep quiet in the Court, by admoniſhing the people in Court to be quiet. Mr. Fergusſon ſaid particularly to Rivett, when he was ſtriking Lord Thanet—do you know who you are ſtriking; that is not a perſon likely to begin a riot.

Q. Did you ſee where Mr. Fergusſon went to after he was upon the table?

A. He got upon the table, and got farther from the ſcene of tumult; and I do not know whether he ſat down upon the table or not; he went towards the Crown Lawyers.

Q. Did you ſee Sir Francis Burdett?

A. I did. He at firſt ſtood by me in the witneſs-box, and when the confuſion began he got nearer to the place of confuſion at the ſame time that I did. I ſaw Mr. Fergusſon remove Sir Francis Burdett from the ſcene of confuſion, and put him farther from it.

Q. And

*Q.* And you ſaw him alſo place himſelf at a diſtance from it?

*A.* Yes.

*Q.* Did you afterwards ſee him go upon the table towards the Judges?

*A.* I did; I ſaw him till all the violence was over.

Q. *Then can you take upon you to ſwear poſitively that neither Mr. Fergusſon nor Lord Thanet, during the tumult, went towards Mr. O'Connor?*

A. *They went in a directly oppoſite direction.*

Q. *Do you ſwear that from your own opinion and belief, or from certain knowledge?*

A. *I ſwear it poſitively from certain knowledge.*

*Croſs-examined by Mr. Adam.*

*Q.* You ſaw Rivett and Fugion preſſing forward?

*A.* I did.

*Q.* Did you know them before?

*A.* I knew them from having ſeen them examined in Court upon that trial,

*Q.* Only from that circumſtance?

*A.* Only from that circumſtance.

*Q.* During this affray you ſhifted your ſituation to another part of the Court?

*A.* Yes; I got upon the table.

*Q.* And you ſay you ſaw Sir Francis Burdett ſhift his place?

*A.* He ſhifted his place at the ſame time.

*Q.* From what part of the Court did he come?

*A.* From the witneſs-box; he ſtood on my right hand.

*Q.* To what part of the Court did he go?

*A.* He alſo went on to the table.

*Q.* Do you mean that he remained upon the table?

*A.* I cannot ſay whether he remained upon the table, but he went there with me.

*Q.* Did he remain on the table any conſiderable time?

*A.* The tumult was over very ſoon after that.

*Q.* The Counſel for the Crown ſat immediately under the witneſs-box?

*A.* They ſat on the ſame ſide.

*Q.* Round the angle?

*A.* Yes.

*Q.* Therefore it was neceſſary when you and Sir Francis Burdett ſhifted your places, that you ſhould go over the heads of the Counſel for the Crown, to get to the table?

*A.* Exactly ſo; we jumped from the neighbourhood of the witneſs-box.

*Q.* Do you remember when Sir Francis Burdett jumped from the

the neighbourhood of the witneſs-box to the table, did he not jump immediately from the table into the crowd?

*A.* I cannot ſay whether he did or not; but I ſaw him ſtanding upon the ſide of the table, or ſitting upon the ſide of the table, till Mr. Ferguſſon removed him.

*Q.* But that was near the concluſion of the affray?

*A.* It was.

*Q.* What circumſtance was it that brought you to Maidſtone?

*A.* Merely to be preſent at the trials.

*Mr. Erſkine.* You are a gentleman poſſeſſing an eſtate in Scotland?

*A.* Yes.

*Q.* And I believe married a daughter of Mr. Bouverie?

*A.* Yes.

*Lord Kenyon.* Did you ſee Mr. O'Connor go out of the dock?

*A.* Yes.

*Q.* How ſoon was he out of your ſight?

*A.* I do not know that he was out of my ſight.

*Q.* Do you know the ſituation of the wicket?

*A.* Yes.

*Q.* Where were Mr. Ferguſſon and Lord Thanet during the time that elapſed between his leaving the bar and being brought back again?

*A.* Upon the table.

*Q.* Did the crowd coming upon them prevent you from ſeeing them?

*A.* No: I was ſo ſituated that I ſaw them both diſtinctly; I was a great deal higher than they.

*Samuel Whitbread, Eſq. ſworn, examined by Mr. Gibbs.*

*Q.* You was preſent, I believe, at the time of this trial?

*A.* I was in Court the latter part of it, after I had been examined as a witneſs.

*Q.* In what part of the Court were you?

*A.* After having been examined as a witneſs I retired out of the witneſs-box, behind, and came into the Court again.

*Q.* Whereabouts was you when the verdict was brought in?

*A.* Conſiderably behind the witneſs-box.

*Q.* Had you from thence a perfect view of the Court?

*A.* Of the lower part of the Court.

*Q.* Had you a perfect view of the dock in which the priſoners were, the Solicitors' ſeat, and the ſeat where the Counſel ſat.

*A.* I had certainly a view of the whole of that part of the Court.

*Q.* Between the verdict and the ſentence we underſtand ſome Bow-ſtreet people came in and ſpoke of a warrant?

*A.* There

*A.* There was ſome tumult, and that ſubſided upon Mr. Ferguſſon calling the attention of the Court to the cauſe of it. He waved his hand and ſpoke to them; he then turned to the Bench, and ſaid, "My Lord," or ſome ſuch word, juſt to draw the attention of the Court: upon that, Rivett, whom I knew before, ſaid he had a warrant againſt Mr. O'Connor, and he thought he was going to eſcape. Mr. Juſtice Buller then ſaid, "Patience," or ſome ſuch word; and then ſentence was pronounced.

*Q.* After ſentence was pronounced, did you obſerve O'Connor?

*A.* I obſerved him put his foot upon the front part of the dock, and get out of the dock: having carried my eye after him ſome time, my eye returned to the bar, and there I ſaw Rivett violently attacking Lord Thanet; he had a ſtick in his hand: I did not ſee him ſtrike a ſingle blow; I ſaw many blows ſtruck at him, and he was endeavouring to ward them off.

*Q. Did it appear to you that Lord Thanet made any attack upon Rivett to provoke this?*

*A. No; on the contrary, he was defending himſelf againſt a violent attack of Rivett's upon him.*

*Q.* Where was Lord Thanet at the time that you obſerved this?

*A.* I think he was cloſe to the table, leaning back upon the table in the act of defending himſelf, with his hands up, in which I think he had a ſtick.

*Q.* Did you ſee at this time where Mr. Ferguſſon was?

*A.* I did not obſerve Mr. Ferguſſon at that time: before the tumult had quite ſubſided I obſerved Mr. Ferguſſon upon the table, not far from the judges.

*Q.* Had you your eye upon Lord Thanet from the time you ſaw Rivett ſtriking him in this way?

*A.* No, I had not, becauſe there was a great deal of tumult behind, and of perſons trying to get out at the door behind the Bench, and the bailiffs reſiſting their attempts, which engaged my attention ſome time.

*Q.* Did you ſee Mr. O'Brien during this time?

*A.* I do not recollect that I did.

*Q.* Did you know Mr. O'Brien well?

*A.* I knew him perfectly by ſight.

*Q.* If he had been acting in this ſcene muſt you have noticed it?

*A.* In a ſcene of confuſion many things muſt have eſcaped the obſervation of every perſon; but I think it is more than probable that I muſt have ſeen ſuch a perſon as Mr. O'Brien, if he had been active.

*Croſs-examined by Mr. Attorney-General.*

Q. How long did you remain at Maidſtone?

A. The next morning, I think, I paſſed you on the road to London.

Q. *Mr. Attorney-General.* I beg your pardon, I did not recollect that circumſtance.

Q. Previous to the officer's approaching the place where Mr. O'Connor was, had you heard that there was to be a reſcue?

A. I had not.

*Richard Brinſley Sheridan, Eſq. ſworn, examined by Mr. Erſkine.*

Q. You was ſubpœna'd as a witneſs to attend the trials at Maidſtone?

A. I was.

Q. Was you in Court at the time when the Jury retired to conſider of their verdict, and alſo when they returned with it?

A. I was.

Q. And during the remaining part of the time till the tumult ceaſed?

A. During the whole of that time.

Q. In what part of the Court was you when the Jury brought in their verdict?

A. Sitting with Sir Francis Burdett in the witneſs-box; that box was raiſed very conſiderably above the table, ſo that I had a direct view of every thing paſſing in the Court.

Q. Had you then an opportunity of perfectly obſerving the place where the Solicitors ſat, and the dock where the priſoner's were, and the place where the Counſel were?

A. A moſt perfect opportunity, without being in the leaſt annoyed or mixed with the tumult.

Q. Do you remember the jailor laying hold of Mr. O'Connor; perhaps you did not ſee that?

A. The firſt that I obſerved of the tumult was prior to the ſentence being paſſed upon O'Coigly; I did not ſee Mr. O'Connor make an attempt to go, but I had obſerved to the High Sheriff that I fancied he would come out, for that I had obſerved at the Old Bailey, that they had left the bar immediately upon the Jury pronouncing them not guilty. The riot then commenced, and I obſerved ſome men preſſing very violently towards the box where Mr. O'Connor was; my attention was taken up with that: Mr. Ferguſſon then appealed to the Court, and ſaid, "Here are two riotous fellows," or ſomething of that ſort, "diſturbing the peace of the Court." Rivett then ſaid, "I have a warrant to apprehend Mr. O'Connor."

O'Connor." Mr. Juſtice Buller deſired him to be quiet, and then put on his cap to paſs ſentence, and every thing ſubſided.

*Q.* After that did you obſerve the Bow-ſtreet-officers ruſhing in, in the way that we have heard?

*A.* The firſt thing I ſaw was Mr. O'Connor getting very nimbly over the front of the dock, and going towards the narrow ſtreet, and theſe men ruſhing after him. Certainly the man who could have thrown himſelf moſt in the way of the men was Mr. O'Brien, if he had choſen to do it.

*Q.* Are you acquainted with Mr. O'Brien?

*A.* I know him intimately.

*Q.* Is he a ſtrong man?

*A.* Certainly he is.

*Q.* If Mr. O'Brien had been deſirous of oppoſing himſelf to the officers and prevent them from going after him, he might?

*A.* He was preciſely in the beſt ſituation to have done it.

*Q.* Had you an opportunity of ſeeing whether he did or not?

*A.* He did not, and I am ſure he was not there in the ſubſequent part of the tumult.

*Q.* Can you take upon yourſelf to ſwear poſitively that he gave no manner of aſſiſtance?

*A.* Poſitively.

*Q.* And Mr. O'Brien had an opportunity of affording the moſt eſſential means of eſcape to Mr. O'Connor, if he had choſen?

*A.* I think the whole idea was folly and madneſs, and that no aſſiſtance could have effected it.

*Q.* But Mr. O'Brien did the contrary?

*A.* Yes; he retired behind the box, and I did not ſee him afterwards. I was very attentive to the whole of it, and was making my obſervations with the High Sheriff, who more than once endeavoured to perſuade me to leave the witneſs-box and endeavour to quell it.

*Q.* Did you ſee Lord Thanet at the time the officers ruſhed in?

*A.* I did not ſee him till the time he was ſtruck; I ſaw him ſtruck.

*Q.* Did he return the blow, or ſhew any thing like activity or a diſpoſition to activity?

*A.* I ſaw him when he was firſt preſſed upon. It was not a tumult merely near the dock, but the whole Court was a ſcene of general tumult and a ſcene of panic, and certainly with the leaſt reaſon—there was a tumult behind us in the witneſs-box; there was a general calling-out not to open the doors, ſome calling out for ſoldiers and conſtables, and there did appear to me a ſincere panic and apprehenſion that there was a planned reſcue. I perceived plainly there was no ſuch thing, and endeavoured all

all I could to perſuade them ſo. The officers were beating down every body, forcing their way and preſſing upon every body. Lord Thanet had a ſtick in his hand with which he was parrying the blows which came amazingly quick; it ſeemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the ſcene of tumult farther into the Court away from the priſoners; Sir Francis Burdett was with me, and by this time Mr. O'Connor was ſtopped and they were bringing him back again; he had attempted to go towards the gate with the wicket, and I obſerved every body to put up their hands and ſtop him; he might as well have attempted to get through a ſtone wall; if there had been ſix or eight perſons there who were ſo diſpoſed, he might perhaps have got as far as the door, but he could not poſſibly have got farther. I then ſaw a perſon upon the table brandiſhing Mr. O'Connor's ſcymetar over the heads of the people; he ſeemed very much alarmed and not knowing what he was about; I am ſure it muſt have gone very near ſeveral perſon's heads, it ſeemed quite miraculous that he did not do ſome miſchief; in ſhort, it was difficult to diſcover whether he meant to keep the peace or break the peace. Sir Francis Burdett ſaw that they had collared Mr. O'Connor, was frightened, and ſaid with great agitation to me, that they would kill O'Connor, and he jumped over the railing; he could not go from where we were without jumping upon the table, and he ran forward; Mr. Maxwell followed him or went at the ſame time; they both went towards Mr. O'Connor; I then ſaw very diſtinctly Mr. Ferguſſon ſtop Sir Francis Burdett, and uſe ſome action, ſaying, "You had better keep away and not come into the tumult at all:" I could not hear what he ſaid, but it appeared ſo to me.

*Q.* Did you ſee Mr. Ferguſſon from the beginning of this ſcene, when ſentence of death was pronouncing?

*A.* I ſaw him plainly in his place, after the Judge had paſſed ſentence of death.

*Q. Did you ſee the crowd preſs upon Mr. Ferguſſon, and did you ſee him get upon the table?*

*A. I did not ſee him get upon the table; but as the crowd preſſed upon him he was forced upon the table.*

*Q. Did Rivett attack Lord Thanet before he could poſſibly have attacked Mr. Ferguſſon, and wrenched a ſtick out of his hand?*

*A. He came immediately upon Lord Thanet, when the tumult began.*

*Q.* He could have had no conflict with Mr. Ferguſſon till after the conflict with Lord Thanet?

*A.* Certainly not.

*Q.* Do you know Mr. Ferguſſon?

*A.* Per-

*A.* Perfectly.

*Q.* If he had been upon the table flouriſhing and waving a ſtick, in the manner that has been deſcribed, in his bar dreſs, muſt you not have ſeen it?

*A.* Yes: it muſt have been a moſt remarkable thing, indeed, for a Counſel in his bar dreſs to have a ſtick flouriſhing in his hand—HE HAD A ROLL OF PAPER IN HIS HAND.

Q. *Does that enable you to ſwear that Mr. Ferguſſon was not in that ſituation?*

A. *Certainly.*

*Q.* Do you think if he had taken ſuch a part in the riot, in the preſence of the Judges, that you muſt have obſerved it?

*A.* I muſt have obſerved it.

*Q.* Did Lord Thanet or Mr. Ferguſſon ever go nearer to Mr. O'Connor after he had jumped out of the dock, or did not Lord Thanet and Mr. Ferguſſon retire farther from the ſcene of tumult?

*A.* They certainly did:—Upon ſome farther converſation I got over this place myſelf, and went down, and the firſt thing I did was to ſpeak to the man with the ſword. I told him I thought he with his ſword made half the riot himſelf; and he put it away. I paſſed Lord Thanet, who was ſo far from ſtaying in the riot, that he went towards the Judges, as if he was going to make a complaint. I then went into the riot, and endeavoured to perſuade them that there was no ſuch thing as an attempt to reſcue O'Connor; and a man that had hold of him, who knew me, ſaid there was; and added, theſe fellows are come down from London; they are Correſponding Society people, and they are come down on purpoſe to reſcue him. One perſon, in particular, called to them not to believe me, and I laid hold of him, and ſaid he ſhould go with me to Mr. Juſtice Buller: I inſiſted upon his name and addreſs, and he would not give it me. I then turned to the Judges, and he ran away. So far was Lord Thanet from going towards the wicket, that I paſſed him going up to the Judges; and Mr. Ferguſſon remained with me, deſiring them not to treat Mr. O'Connor ſo, and generally endeavouring to quiet them: the only moment they were out of my eye was while I was getting over this place.

*Croſs-examined by Mr. Law.*

*Q.* You ſaw Lord Thanet diſtinctly from the time he was ſtruck?

*A.* I do not mean with the ſtick;—I corrected that by ſaying, from the time he was aſſaulted and driven from the ſeat he was in at firſt.

*Q.* Can you take upon you to ſay whether he gave a blow before he was ſtruck?

*A.* I

*A.* I ſaid from the time he was preſſed upon or aſſaulted?

*Q.* You ſay you ſaw Lord Thanet going towards the Judges, as if he was going to complain, Did you hear him make any complaint to the Judges?

*A.* I did not hear him, certainly.

*Q.* I will aſk you, Whether you do or not believe that Lord Thanet and Mr. Ferguſſon meant to favour O'Connor's eſcape, upon your oath?

*A.* Am I to give an anſwer to a queſtion which amounts merely to opinion?

*Q.* I aſk, as an inference from their conduct, as it fell under your obſervation, Whether you think Lord Thanet or Mr. Ferguſſon, or either of them, meant to favour Mr. O'Connor's eſcape, upon your ſolemn oath?

*A.* Upon my ſolemn oath I ſaw them do nothing that could be at all auxiliary to an eſcape.

*Q.* That is not an anſwer to my queſtion?

*A.* I do not wiſh to be underſtood to blink any queſtion; and if I had been ſtanding there, and been aſked whether I ſhould have puſhed or ſtood aſide, I ſhould have had no objection to anſwer that queſtion.

*Q.* My queſtion is, Whether, from what you ſaw of the conduct of Lord Thanet and Mr. Ferguſſon, they did not mean to favour the eſcape of O'Connor, upon your ſolemn oath?

*A.* The Learned Counſel need not remind me that I am upon my oath, I know as well as the Learned Counſel does, that I am upon my oath; and I will ſay that I ſaw nothing that could be auxiliary to that eſcape.

*Q.* After what has paſſed, I am warranted in reminding the Honourable Gentleman that he is upon his oath—My queſtion is, Whether from the conduct of Lord Thanet or Mr. Ferguſſon, or either of them, as it fell under your obſervation, you believe that either of them meant to favour O'Connor's eſcape?

*A.* I deſire to know how far I am obliged to anſwer that queſtion? I certainly will anſwer it in this way, that from what they did, being a mere obſerver of what paſſed, I ſhould not think myſelf juſtified in ſaying that either of them did—Am I to ſay whether I think they would have been glad if he had eſcaped? that is what you are preſſing me for.

*Q.* No man can miſunderſtand me; I aſk, Whether, from the conduct of Lord Thanet or Mr. Ferguſſon, or either of them, as it fell under your obſervation, you believe upon your oath that they meant to favour the eſcape of O'Connor?

*A.* I repeat it again, that from what either of them did, I ſhould have had no right to conclude that they were perſons aſſiſting the eſcape of O'Connor.

*Q.* I

*Q.* I aſk you again, Whether you believe, from the conduct of Lord Thanet or Mr. Ferguſſon, or either of them, upon your oath, that they did not mean to favour the eſcape of O'Connor?

*A.* I have anſwered it already.

*Lord Kenyon*—If you do not anſwer it, to be ſure we muſt draw the natural inference.

*Mr. Sheridan*—I have no doubt that they *wiſhed* he might eſcape; but from any thing I ſaw them do, I have no right to conclude that they did.

*Mr. Law*—I will have an anſwer:—I aſk you again, Whether, from their conduct, as it fell under your obſervation, you do not believe they meant to favour the eſcape of O'Connor?

*A.* If the Learned Gentleman thinks he can entrap me, he will find himſelf miſtaken.

*Mr. Erſkine*---It is hardly a legal queſtion.

*Lord Kenyon*—I think it is not an illegal queſtion.

*Mr. Law*---I will repeat the queſtion, Whether, from their conduct, as it fell under your obſervation, you do not believe they meant to favour the eſcape of O'Connor?

*A.* My belief is that they *wiſhed* him to eſcape; but from any thing I ſaw of their conduct upon that occaſion, I am not juſtified in ſaying ſo.

*Q.* I will aſk you, Whether it was not previouſly intended that he ſhould eſcape if poſſible?

*A.* Certainly the contrary.

*Q.* Nor had you any intimation that it was intended to be attempted?

*A.* Certainly the contrary. There was a looſe rumour of another warrant, and that it was meant that he ſhould be arreſted again, which was afterwards contradicted. Then the queſtion was mooted whether the writ could be iſſued before he was diſmiſſed from cuſtody? Certainly there was no idea of a reſcue. There was no friend of Mr. O'Connor's, I believe, but ſaw with regret any attempt on his part to leave the Court.

*Q.* From whom did you learn that there was ſuch a warrant?

*A.* It was a general rumour.

*Q.* From whom had you heard this rumour?

*A.* I believe from Sir Francis Burdett; but I cannot tell.

*Q.* At what time was that?

*A.* About four or five o'clock.

*Q.* Have you ever ſaid that the Defendants were very blameable; Lord Thanet, Mr. Ferguſſon, or any of them?

*A.* Certainly not.

*Q.* At no time ſince?

*A.* Certainly never.

*Mr. Erſkine*---You were aſked by Mr. Law, whether you believed that the Defendants wiſhed, or meant, to favour the eſcape of Mr. O'Connor; *I aſk you, after what you have ſworn, whether you believe theſe Gentlemen did any act to reſcue Mr. O'Connor?*

A. *Certainly not*; and I have ſtated upon my oath, that every man in the narrow gate-way endeavoured to ſtop him: I remarked it particularly; becauſe, there being a common feeling among Engliſhmen, and he being acquitted, I thought they might form a plan to let him eſcape.

*Q.* You have ſtated that you ſaw no one act done or committed by any one of the Defendants, indicative of an intention to aid O'Connor's eſcape?

*A.* Certainly.

*Q.* I ASK YOU THEN, WHETHER YOU BELIEVE THEY DID TAKE ANY PART IN RESCUING MR. O'CONNOR?

*A.* CERTAINLY NOT.

*End of the Evidence for the Defendants.*

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## *MR. ATTORNEY-GENERAL.*

GENTLEMEN OF THE JURY,

AT this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any conſiderable time in reply to the obſervations of my Learned Friend.

Gentlemen, my Learned Friend has addreſſed you with great ability; and unqueſtionably with great but guarded zeal, on behalf of his clients;—this his duty called upon him to do; for certainly the beſt exertion of his great abilities was due to them. On the other hand, your attention is now to be occupied by a perſon who muſt addreſs you upon principles which forbid him to have any zeal upon the ſubject.

The Attorney-General of the country, as it appears to me, has a public duty to execute, in reference to which be ought to conceive, that he has properly executed that duty, if he has brought a fit and proper accuſation before a Jury, and has proceeded to the length of honeſtly and fairly examining the ſeveral

veral circumſtances given in evidence in ſupport of, and in anſwer to, that accuſation: always recollecting that the Jury will finally hear, from that wiſdom which cannot miſlead them, the true inferences that will ariſe upon facts that have been given in evidence on both ſides. They will hear it from a perſon unqueſtionably leſs prejudiced than I can be (though I have endeavoured as much as poſſible to guard myſelf againſt any prejudice), becauſe it belongs to the mind of man to be influenced by circumſtances, which one's duty as a proſecutor obliges one to look at a little anxiouſly.

Gentlemen, Having been charged with the duty of laying this important caſe before you, I have not the leaſt doubt but you will diſcharge the duty which is now impoſed upon you with a full and conſcientious regard to juſtice; and I diſmiſs here all the obſervations my Learned Friend has made upon the high rank and ſituation of Lord Thanet, upon the reſpectable ſituation in his profeſſion of Mr. Ferguſſon, and of the ſituation of Mr. O'Brien; becauſe it is quite enough for me, according to my ſenſe of duty, to ſay this, that, as a Jury ſworn to make a true deliverance, you are not to convict any of them, whatever rank or ſituation belongs to them, unleſs you are conſcientiouſly ſatisfied that they are guilty. You will deliver the ſame verdict that you would between the King and Defendants of any other deſcription.

Gentlemen, What has fallen from the laſt witneſs obliges me to take the character of the proceeding which gives riſe to the cauſe, from his friend; who, when he was addreſſing you, in the courſe of this afternoon, ſaid, and truly ſaid, that ſuch a proceeding in a Court of Juſtice, which the laſt witneſs repreſented as an idle panic, moſt loudly called for the interpoſition of the law. That witneſs may have repreſented thoſe tranſactions, as I have no doubt he did, as it ſeemed juſt to him to repreſent them. Certainly I was not perſonally preſent; but I was within hearing, and I can ſay that that Gentleman is a man of ſtronger nerves than any other man in this country, if the repreſentation he has given of this ſcene is a true one. By a true one, I do not mean that it is not one that the Gentleman believes to be true; but the evidence of Mr. Juſtice Heath gives it a character which I believe every man in the county of Kent who was preſent would give it, namely, that it was a proceeding utterly inconſiſtent with the ſafe adminiſtration of juſtice; that it was attended with a degree of indecency and tumult that was never witneſſed in a Court of Juſtice before, and I truſt never will be witneſſed in a Court of Juſtice again.

Gentlemen, Having no anxiety about the fate of this or any other cauſe, except ſo far as it is fit for me to have an anxiety founded upon the public intereſts, whenever this cauſe comes to

its concluſion, I think the Noble Peer, the Defendant, who holds a ſituation high in this country, ought to join with all his fellow-ſubjects, in thankfully acknowledging, that the Attorney-General, having reaſonable accuſing evidence to lay before a Jury (whether it is ſatisfactory to their minds, is another conſideration), ſhould ſhew to the country, that tranſactions of this ſort ſhall not be carried on, without being brought under the notice of a Court of Juſtice.

Gentlemen, Accuſations of all ſorts are tried in this country with great propriety; but if you acquit a man of treaſon, is a man to ſtart up and ſay, that the public are to be indignant, becauſe another warrant has been iſſued againſt him? I remember in this very Court, in the laſt cauſe that was tried here at bar, my Lord exerted himſelf with great vigour, by taking immediate notice of ſuch an inſult as was then offered to the Court. My Learned Friend ſays, why did not the Judges, who were preſent, do their part, by taking notice of the fact at the moment? I will give the anſwer to that: The Judges of the country are but men. Although they are placed in high judicial and honourable ſituations, yet they are placed in ſituations in which they are to ſee that their conduct is not only the beſt that they can purſue, but, when they proceed to acts of puniſhment, that their conduct is perfectly adapted to the ſubject with which they are dealing. If the five Judges upon the Bench had ſeen this as an idle panic, perhaps thoſe Judges would have treated it as an idle panic. But how does Mr. Juſtice Heath, upon whom my Learned Friend relies ſo much—how does he mention the ſcene that was paſſing? He ſays that he never witneſſed ſuch a ſcene before.—My Learned Friend ſays, I might have called another Learned Judge as a witneſs, but when I call witneſſes who are above all ſuſpicion, men as honourable as any men in this country, to ſtate to you all that that Learned Judge would have had to ſtate to you, I think I ſhall have acted neither unfitly for the public, or the Defendants. But with reference to that converſation (upon which I muſt farther obſerve by and by) that has been ſtated by Mr. Solicitor-General and by Mr. Abbott, to have paſſed between Mr. Juſtice Lawrence and Lord Thanet, I ſhould be glad to know, what foundation there is for the reaſoning of my Learned Friend, that Mr. Juſtice Lawrence ought to have committed or attached Lord Thanet. I think I am entitled, under the circumſtances of the evidence in this caſe, to repreſent him as perfectly ignorant of thoſe cauſes which occaſioned ſo much confuſion in the Court.

*Mr. Erſkine*---I never meant to ſay ſo.

*Mr. Attorney-General*---My Learned Friend certainly did not ſtate it exactly in theſe words; but he will, I am ſure, excuſe me for putting him in mind of the expreſſion he made uſe of

of, and I ſhall now endeavour to repeat the very words he uſed, "Mr. Juſtice Lawrence, inſtead of aſking Lord Thanet to "do him a kindneſs, ſhould have attached him." My Learned Friend will not, I am ſure, interrupt me again; for when I take notice of any thing that is ſaid in ſo able a defence, I do not mean to lay it down that Counſel are to be reſponſible for every expreſſion that haſtily falls from them; but expreſſions may have an application which I feel it my duty to remove; and I only wiſh to ſet right one of the moſt reſpectable, and indeed all thoſe reſpectable characters who preſided on the Bench upon that day. I ſhall therefore ſay no more upon that ſubject.

Gentlemen, The queſtion is now before you; and I am happy to have the teſtimony of my Learned Friend, that, taking this proceeding as a mere proceeding of accuſation, it is a highly proper one; and when I ſtate that, I mean to ſtate merely the ſatisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, Having ſaid thus much, give me leave to concur moſt fully in all that my Learned Friend ſays, with reſpect to the beneficial effects of a lenient adminiſtration of the law, but not ſo lenient as to make the law ineffectual.

Gentlemen, It was hinted to me, before my Learned Friend began his addreſs to you, that, with reſpect to two of the Defendants, it might be conſiſtent with the intereſts of juſtice, that the trial ſhould end there; and why did I conſent to that? There was evidence to go to the Jury, as againſt Mr. Thompſon; I admit, not evidence to convict him, not evidence, perhaps, with reſpect to his identity—But with reſpect to Mr. Gunter Browne, there was much more conſiderable evidence to go to you, ſubject ſtill to the queſtion of identity—But I know this, that the great intereſts of public juſtice are better ſatisfied, by not preſſing for conviction, even when you *can*, perhaps, obtain it, if you think there are doubts whether or not you *ought* to obtain it.

Gentlemen, Another circumſtance is, that I thought it due particularly to one Defendant, with reſpect to whom I think this the cleareſt caſe, Mr. O'Brien. I wiſhed to give him the benefit of Mr. Browne's and Mr. Thompſon's evidence, if he thought proper to call them, with reſpect to ſome material circumſtances.

Gentlemen, Attend to what I am now ſtating.—When Mr. Sheridan is aſked, whether, from the circumſtances that fell within his obſervation, he believes that Lord Thanet and Mr. Ferguſſon meant to favour the eſcape of Mr. O'Connor? he ſays: "From the facts that fell within my obſervation, I anſwer it in the negative." So I ſay in this caſe, it is not merely (for the rules of evidence permit one ſo to ſtate), it is not merely from what *does* appear, that a Jury is to judge, but alſo

alſo from that which does *not* appear. Now ſee what is the caſe on the part of the Crown, with reſpect to Mr. O'Brien? In the firſt place, you have the evidence of a moſt honourable perſon, Mr. Serjeant Shepherd.—My Learned Friend ſays, that, you, Gentlemen of the Jury, are not to attend to general queſtions, ſuch as, "Did a perſon appear to do ſo and ſo?" but you are to have the facts as the grounds upon which that appearance is inferred. That propoſition is to be carried this length, that as far as the nature of the tranſaction will admit, inſtead of giving the impreſſion of your mind, as collected from the circumſtances, you ſhall give the circumſtances which have created that impreſſion. I am ſure his Lordſhip will remember, that in the caſe of Kyd Wake, who was tried for that deteſtable riot, with reſpect to the King's perſon, a queſtion was put, "Did he appear to be active in the riot?" and the Jury concluded that which they did conclude, upon that circumſtance; recollecting that the nature of the tranſaction was ſuch, that they muſt be content with ſuch an anſwer. And indeed my Learned Friends themſelves put the queſtion to Mr. Smith, and Mr. Warren, reſpectable witneſſes unqueſtionably: "Did they (the Defendants) appear to encourage the riots?" But permit me to ſay, it did not reſt ſo with Mr. Serjeant Shepherd; for he told you, he wiſhed to give you the evidence upon which he formed his opinion.—Gentlemen, you will next obſerve, that, giving Lord Thanet all the benefit that might ariſe upon this ſtatute of 14 Geo. III. (upon which I ſhall ſay a word by and by), can Mr. O'Brien alledge any thing of that kind? Rivett has told you diſtinctly (and ſo it turns out from Mr. Sheridan's evidence), that there was a rumour of a warrant, which created ſo much indignation; Mr. Sheridan admits, that there was that rumour, but Mr. O'Brien did not chuſe to rely upon that; he wanted to know how the truth of the rumour was; and accordingly, in the preſence of Mr. Thompſon, a member of parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr. O'Brien, propoſed a bet; he ſays, that Mr. O'Brien then went back again to where Mr. O'Connor was: there was ſome converſation between them, and when the verdict is brought in Mr. O'Connor attempts to eſcape. Now, I aſk you, as honeſt Jurymen, if this is not true, why is it not contradicted; and if it is true, is it poſſible to acquit Mr. O'Brien?

Now, with reſpect to the caſe of my Lord Thanet and the caſe of Mr. Ferguſſon, Gentlemen, I declare to you moſt ſolemnly, that I reſpect the high ſituation of the one, as I reſpect the profeſſional ſituation of the other; but in this caſe, Gentlemen, the queſtion, and the only queſtion is, "Did they make a riot?" I deſire that the queſtion may be put upon its true merits. My Learned Friend ſays, "It is a moſt extraordinary thing, that in ſuch

ſuch a caſe as this, ſtating that there was a general riot, we have not been able to fix the name of any other rioter with theſe five Defendants." Has my Learned Friend denied that this was a general riot? Has my Learned Friend denied that it was a very ſerious riot, affecting a great variety of perſons? Now, though he is bound to admit the exiſtence of a riot, my Learned Friend is juſt as much at a loſs to find the names of the other perſons as I am; and why? becauſe the circumſtances attending the tranſaction are ſuch, that if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things, that you ſhould bring any man to puniſhment, in ſuch a caſe. Then my Learned Friend ſays, "What motive could Lord Thanet have?" Mr. O'Connor, who has been repreſented as an extremely judicious man upon ſome occaſions, was certainly ſo fooliſh, as to think ſuch a project as this might have have been practicable; but is it in fact imputed to theſe perſons, that they meant to turn Mr. O'Connor looſe, in order to ſubvert the conſtitution of this country (for ſo my Learned Friend ſtates it)? and to do all this miſchief which he is pleaſed to repreſent to you, muſt have been the conſequence of Mr. O'Connor's eſcape. He ſeems to have forgot, that all I meant to impute (for ought I know, there may be men in the country who know more of it than I do), that all I am charging upon theſe Defendants, is, that they meant to reſcue Mr. O'Connor from any farther demand that Juſtice might have upon him. Whether Mr. O'Connor was immediately to take himſelf out of this country, into a ſituation in which he could do no miſchief, or whether he was to remain in this country to do miſchief, is a queſtion with which I have no buſineſs.—I have no neceſſity either to impute to the Noble Lord or the Learned Gentleman, any particular knowledge or intention upon that ſubject. Then my Learned Friend ſays, "Do you think perſons in the ſituation in which theſe two Defendants are (I mean Lord Thanet and Mr. Ferguſſon), would further ſuch a purpoſe as this?" Why, Gentlemen, if I am to give an anſwer to this queſtion, I am bound (for I would not have brought this proſecution, if I had not thought it a fit queſtion for the deciſion of a Jury) to ſpeak out plainly upon the ſubject; and I ſay, fairly, that if any man had aſked me before this trial was over, whether Mr. Ferguſſon and Lord Thanet, having heard the particulars of the evidence, would not have removed to ſituations where they could not have been implicated in this charge, I ſhould have thought the imprudence of doing otherwiſe ſo great, that it could not have happened. Mr. Ferguſſon knew all the particulars of the evidence, and ſo did Lord Thanet, becauſe he heard the evidence ſummed up, and I cannot help feeling here ſome degree of ſurprize, when the

queſtion

queſtion was put to me, upon what was probable or what was improbable, after hearing the evidence upon that Trial.

Gentlemen, That there was a riot, is clear beyond all doubt. Now let us ſee how it is occaſioned:—Mr. O'Brien knew of this rumour, at the time the application was made to the Court, by Rivett and Fugion. He was aware, that Mr. O'Connor was not diſcharged. He learned, and Lord Thanet learned, and I believe nobody doubts the fact, that every body learned this circumſtance, not only that he was not then to be diſcharged (with reference to which I am happy to find that my Learned Friend and I agree upon the point of law), not only that he was not then to be diſcharged, but it was publicly taught to every body in Court, what was the reaſon and what the cauſe for which his diſcharge was to be withheld from him. And here, without commenting upon that meaſure, which is ſuppoſed to have raiſed ſo much indignation, I take leave to ſay moſt confidently, that it does not belong to any perſon, of any rank or ſituation whatever, to interpoſe in the execution of a warrant, upon his notion whether the magiſtrate has acted right or wrong in granting it.—It is granted and muſt be acted upon.—If the magiſtrate has acted improperly, the law of the country is not ſo feeble, as not to be able to reach the miſconduct of the magiſtrate. If every man is to judge in ſuch a caſe, ſurely the country is in a ſituation moſt embarraſſing, moſt difficult, and moſt awful; (for, remember, if men will take the law into their own hands where there are verdicts of Acquittal, they may where there there are verdicts of Guilty). Well, then, the parties having diſtinctly learned, that there was a warrant, and having been authoritatively told, that this warrant having iſſued, Mr. O'Connor was not to be diſcharged, I ſhall call your attention to what I take to be the few circumſtances that muſt decide this caſe:—Gentlemen, if you pleaſe I will put it ſo, not to give Rivett any credit, if, upon any other part of the caſe, he is contradicted; but I ſhould do that with great reluctance, till I am ſatisfied that he is not worthy of credit. But I will ſay this, that you may reject the whole of the evidence of Rivett, with reſpect to Lord Thanet and Mr. Ferguſſon, out of the caſe, and ſay, whether out of the negative evidence given on the other ſide, you can get rid of the facts ſworn and depoſed to by perſons whoſe characters are out of the reach of the breath of ſuſpicion.

In the firſt place, with reſpect to the evidence of ſomebody, whoſe name I forget, upon the trial at Maidſtone, a witneſs was aſked, whether Mr. O'Connor wiſhed to favour an invaſion of Ireland? he ſaid, Quite the contrary.—So here, a witneſs when he was aſked, whether Mr. Ferguſſon appeared to be favourable to this reſcue, he ſaid, "Quite the contrary." This was a much ſtronger negation than that of the Maidſtone witneſs;

witneſs; but upon being aſked, what was the circumſtance from which he inferred, that Mr. Ferguſſon's demeanour was quite the contrary? he ſays, he complained of the Bow-ſtreet officers' coming forward.—Now, Mr. Ferguſſon muſt have known them to be Bow-ſtreet officers, becauſe he was preſent when they were examined; and being a gentleman who wears the robe that I wear, he could not but underſtand, that they were not to be diſturbed, *becauſe* they were officers.—The great proof of his demeanour then being quite the contrary, is, that he makes a complaint of theſe perſons ſtanding between the Priſoner and the Jury; whether the fact was ſo, or not, I do not know.—Mr. Garrow ſays, he apprehends, from the ſtate of the Court, it could not be at that period of the trial. Then what is the anſwer to that? I will put it in plain intelligible words:—If Mr. Ferguſſon had been miſled, by reading the ſtatute 14 Geo. III. which ſays, "that gaolers ſhall not detain priſoners for their fees, but that they ſhall be diſcharged;" if he had not found out the difference between a verdict of Not Guilty, and that judgment which authorizes a man to go without paying his fees; if it had not occurred to him, that, when this diſcharge is given, detainers may be lodged in civil ſuits, or for other felonies, I hope in God we are not ſo revolutionized as to contend, that a man ſhall not be charged with two treaſons, as well as with two felonies. Upon Mr. Ferguſſon being told, that there was this warrant (the warrant being publicly exhibited), it is not for me to examine, what it became Mr. Ferguſſon to do, becauſe of that he is himſelf the judge. But I ſay, if, after he was apprized of that, he took any part, not by poſitive actual conduct, but by encouragement, capable of being exhibited to the underſtandings, and impreſſed upon the minds of the Jury, as ſuch (however differently perſons may tell their ſtories, with reference to certain facts, in which they do not agree, however ſtrongly individuals may ſpeak with reſpect to facts that they did not obſerve, however negatively they may ſay they did not ſee this or that, and they do not think it poſſible, and ſo forth); if there are poſitive circumſtances ſworn, which amount to acts of encouragement, which a Jury can feel and act upon, they muſt look to that poſitive evidence; and if, in this caſe, Gentlemen, you find that poſitive evidence exiſting, however unwilling you may be to find ſuch a verdict, you are ſworn, upon your oaths, to give a verdict according to law; and you muſt find a verdict therefore in ſupport of this information.

Gentlemen, I will not go into a detail of the evidence, which you will hear from his Lordſhip; but with reference to Lord Thanet and Mr. Ferguſſon, I cannot part with the evidence given by Mr. Solicitor-General; but I ſhall firſt make this obſervation upon the evidence of Mr. Serjeant Shepherd,

to

to whoſe credit, honour, and accuracy, we all do juſtice, that where that evidence preſſes upon Mr. O'Brien, he ſays, that "Mr. O'Brien having turned round and looked up at Mr. O'Connor, it made an impreſſion upon his mind;" and alſo that, "as far as he obſerved, Lord Thanet was defending himſelf." He judges therefore of appearances, both with reference to Lord Thanet and with reference to Mr. O'Brien; and what he ſays of the appearances with reference to Mr. O'Brien certainly throws a great degree of credit upon his accuracy when he ſpeaks with reſpect to Lord Thanet. The ſame credit is due, I take it, to Mr. Solicitor-General: and you will have the goodneſs alſo to attend to the evidence of Mr. Huſſey; for if you believe what he ſtates, that when the man was preſſing forward to execute the warrant, Lord Thanet inclined towards the bar, and put his perſon in the way; if that fact is proved to your ſatisfaction, Lord Thanet is guilty upon this Record. And if other facts are proved againſt Lord Thanet, and ſimilar facts are proved againſt Mr. Ferguſſon, you muſt decide upon all the evidence, and not from what other men did *not* ſee or obſerve; you are not to decide upon the eloquence of my Learned Friend, but upon the oaths of perſons who depoſe poſitively to facts. Then my Learned Friend made an obſervation upon the evidence of Mr. Solicitor-General, with reference to whom, as a moral character, I ſay nothing, becauſe he is above all praiſe that I can beſtow upon him: I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, becauſe he ſpeaks to the circumſtance of Mr. Ferguſſon crying out that Mr. O'Connor was diſcharged. He tells you the pains he took with his brother in the profeſſion to tell him that he was not diſcharged; and he ſpeaks to the warrant being produced, and therefore there was a public notice, that there were further demands of juſtice upon Mr. O'Connor. He ſtates upon his oath, that he did moſt diſtinctly and cautiouſly attend to the conduct of Mr. Ferguſſon and Mr. O'Connor; and then he ſays this: "I fixed my eye upon "O'Connor, and I obſerved Mr. Ferguſſon, and other perſons "whom I did not know, encouraging Mr. O'Connor to go "over the bar." Encouraging is a general word undoubtedly; but it is a word which expreſſes the impreſſion which facts falling under his eye had made upon his mind; and when he was aſked what he meant by encouragement? he deſcribes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it alſo with a caution, which entitles it to the ſame degree of credit which Mr. Serjeant Shepherd's evidence derives from its accuracy; for when he comes to ſpeak of a circumſtance, with reference to which he is not certain, he tells you, "Mr.

" O'Connor jumped over the bar, and Mr. Ferguſſon turned " himſelf round and appeared to me to follow Mr. O'Connor; " but I cannot ſay that he did." He qualifies that apprehenſion in his mind, by telling you that he may be miſtaken, and then he gives you the reaſon why he doubts whether that apprehenſion was or was not juſtly founded; and he finally ſtates in his evidence a circumſtance reſpecting Lord Thanet, which I think will deſerve a great deal of your conſideration. Gentlemen, a Learned Friend of mine behind me, Mr. Abbott, has told you, that he heard Lord Thanet expreſs himſelf in the manner which he has deſcribed, and I truſt I ſhall not be told that the manner of an expreſſion is not evidence of the import of the mind of the man from whoſe mouth the expreſſion flows. He ſtates to you the circumſtance of Mr. Sheridan's converſation with the Learned Judge, and he was ſtruck with the extreme difference of the manner in which Mr. Sheridan expreſſed himſelf to that Learned Judge, from the manner in which Lord Thanet expreſſed himſelf. Am I to be ſurprized that Lord Thanet could be engaged in ſuch a project, if I can believe, that he, a Peer of the Realm, made uſe of ſuch language to a Judge of the Country, that " he thought it fair that he " (the priſoner) ſhould have a run for it?"—a run, for what; Why, a run to elude juſtice!—a run to get out of the hands of a Court of Juſtice—a run to prevent being brought to juſtice; and this is the ſentiment of a Peer of the Realm—" he thought " it fair to have a run for it. And, conſidering it to be fair, he acted upon that apprehenſion, as far as he had the power of acting. This is a circumſtance requiring your anxious conſideration. Whether this Noble Peer ſtruck Rivett firſt, which I do not find Rivett ſay that he did, is of no importance. Theſe men have a certain temper and degree of ſpirit about them, which might perhaps induce them to thraſh a Peer more than any body elſe, if they felt themſelves ill-treated; but Mr. Rivett may take this advice of me—I hope, in future, he will not uſe ſuch treatment if he can avoid it. But what preſſes upon my mind is, that if Lord Thanet, treated in the manner he was by Rivett, had no connection with this project of reſcue; if he had not, either from the circumſtances that fell under Mr. Sheridan's obſervation, or from other circumſtances, manifeſted that he meant there ſhould be a reſcue, is it the conduct of a man of conſiderable ſituation—is it the conduct of a man of common ſenſe, inſtead of making a ſerious complaint upon the ſubject, inſtead of ſtating, as he naturally would have done, " this project of reſcuing a man from the " hands of juſtice, is that ſpecies of project, which, in my " ſituation, it muſt be known I muſt feel to be inconſiſtent " with propriety, duty, and honour, to have embarked in?" On the contrary, he is perfectly neutral; no complaint is made

upon the ſubject. It appears to me, that if I had been ſtruck two or three times by that officer, the manner in which I would have acted upon that occaſion would certainly not have been to have immediately ſtated that "it was fair the priſoner "ſhould have a run for it," but to have made ſome application to have thoſe puniſhed of whoſe conduct I had a right to complain. Now, this evidence of the Solicitor-General is alſo confirmed by Mr. Abbott, and by Mr. Serjeant Shepherd, who ſtates to you what Lord Thanet did; and he ſtates it to you, that he was not holding up his hands for the purpoſe of reſcuing himſelf from the preſſure of the mob, but was holding up his hands to defend himſelf againſt thoſe perſons who were purſuing Mr. O'Connor; and he gives his evidence in ſuch a way, that you can have no doubt as to the perſonal conduct of Lord Thanet. Then when you have heard this evidence on the part of the proſecution, I mean the evidence that goes to poſitive facts, it will be for you to decide whether they are not all reconcileable with the negative evidence given on the part of the Defendants. I have not gone into the whole of the evidence, becauſe I feel that my Lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and ſure that this proſecution will have been very beneficial to the country. I hope and truſt that I ſhall never ſee ſuch another; but whenever I ſee an occaſion which calls for it, whilſt I hold the ſituation which I have the honour to fill, I will not fail to inſtitute it.

Gentlemen, having ſaid thus much, and having endeavoured to diſcharge myſelf of my duty, you will be good enough to ſay what is due as between the Public and the Defendants,

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## *LORD KENYON'S CHARGE TO THE JURY.*

GENTLEMEN OF THE JURY,

IF I could, conſiſtently with my own ſenſe of my duty, or conſiſtently with the public expectations—conſiſtently with the expectations of the Bar on the one ſide and the other, and with your expectations—I could relieve myſelf from going through, in detail, all the particulars of this caſe, after conſiderable bodily and mental exertions already, I ſhould certainly

tainly ſave myſelf from a great deal of trouble. But I will not ſhrink from the diſcharge of my duty, though it may be attended with labour and pain.

This is a caſe of the firſt importance. I do not remember any caſe that ever happened in my time, in the ſhape of a miſdemeanour, of more importance to the Public: and it has been conducted in the moſt ſolemn manner. It is brought before the whole Court, aſſiſted by a Jury of Gentlemen from the county of Kent, taken from the higheſt orders of the people, and whoſe educations and ſtations in the world qualify them to decide cauſes of ſuch importance. It is uſual, in cauſes of this kind, where there is a number of Defendants, and where the evidence does not extend ſufficiently to them all, to ſubmit to the Jury, before the end of the cauſe, whether thoſe upon whom the evidence does not attach, ought not to be acquitted, in order that the other Defendants may avail themſelves of their evidence, if they ſhall think proper. It was with a view to that very ſtate of the queſtion that I took the liberty to ſubmit to you, that two of the Defendants ought to be acquitted before the other Defendants produced their evidence; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to ſhew, on the reſt of the caſe, what the real ſtate and juſtice of it was.

In diſpenſing the criminal juſtice of the country, we have ſometimes an arduous taſk to perform. It is not a pleaſant thing, moſt certainly, to condemn any one of our fellow-creatures to puniſhment: but thoſe who are entruſted with the adminiſtration of the criminal juſtice of a country, muſt ſummon up their fortitude, and render juſtice to the Public, as well as juſtice tempered with mercy to the individual. I have the authority of Lord Hale, one of the greateſt and beſt men that ever lived, for ſaying, that Juries are not to overlook the evidence—that they are not to forget the truth, and to give way to falſe mercy; but, without looking to the right hand or the left, they are to weigh the evidence on both ſides, and then, according to the beſt of their judgment and underſtanding, to do juſtice to the Public, as well as to the Defendants.

Before I proceed to ſum up the evidence, I ſhall only make one other obſervation, which was made by Mr. Whitbread in giving his evidence, the tone of whoſe voice I never heard before. Having gone through his evidence, he gave us this *legacy*, as a clue to direct us in the deciſion of this caſe—"that, "in a ſcene of ſo much confuſion, there are many things which "muſt eſcape the obſervation of every individual." Having ſtated thus much to you, I will now proceed to ſum up the evidence; and when I have done that, I ſhall make ſome few obſervations on it. [*His Lordſhip here ſummed up the evidence on both ſides, and then proceeded as follows:*]

I now

I now proceed to make a few obſervations of my own. There is no occaſion to give you my authority, or the authority of thoſe who hear me, upon this point.—There is no doubt that the priſoner was not entitled to be diſcharged; for, when a verdict of acquittal is entered, a Judge may order a party to be detained, and compel him to anſwer other charges that may have been brought againſt him. On this point there is no difference of opinion; it is not even diſputed at the Bar: the caſe is clear; and there is no doubt upon earth that a priſoner, in many caſes, though he may be acquitted, as in the caſe of an appeal of murder, cannot be diſcharged though he be acquitted of the murder.

I have ſtated the evidence on the one ſide and the other; and although there is ſtrong contradictory evidence, yet I think there is a great deal of evidence which goes in ſupport of the charge. There were ſome obſervations made by the Learned Counſel for the Defendants, which perhaps were not altogether warranted. Counſel are frequently induced, and they are juſtified in taking the moſt favourable view of their client's caſe; and it is not unfair to paſs over any piece of evidence they find difficult to deal with, provided they cite fairly and correctly thoſe parts of the evidence they comment upon. The Learned Counſel for the Defendants, in his remarks on the evidence, totally forgot the evidence of Mr. Parker. If his evidence is to be believed, and I know no reaſon why it is not, he certainly gave important evidence in ſupport of this charge—that the Defendants evidently appeared to be attempting to ſtop the officers, and aſſiſting the eſcape of Mr. O'Connor. The Learned Counſel for the Defendants did not chooſe to deal with this evidence, though he conducted the cauſe with all poſſible diſcretion, abilities and eloquence. As I have before obſerved, there is apparently a great deal of contradiction in this cauſe. I muſt again ſtate the obſervation of Mr. Whitbread, and which was obvious if he had not made it, that, "in ſuch a ſcene of tu-"mult and confuſion, many things muſt paſs which eſcape the "obſervation of every individual." But there is no doubt of one thing—one thing is clear: if Rivett had not the ſcuffle which he ſwears he had with Mr. Ferguſſon and my Lord Thanet, and if he did not wrench a ſtick out of Mr. Ferguſſon's hand, he is palpably forſworn, and groſsly perjured. For him there is no excuſe in the world. What motive he might have I do not know; he has no intereſt; and in weighing the teſtimony of witneſſes, I cannot conſider the rank of a perſon, nor his ſtation. It is clear, if he has not told the truth, he is guilty of perjury. In this ſcene of tumult, men's minds muſt have been greatly diſtracted. It is for you to ſay what degree of credit you will give to all the witneſſes.—Theſe are the obſervations I have

to

to make; and I ſhould retire from my duty if I had not made them to you.

It has been ſaid, in the courſe of this cauſe, that it was againſt all probability.—Was it probable that an attempt was meditated to effect the eſcape of a perſon ſuch as Mr. O'Connor in a Court of Juſtice, in a large town, and in a public part of that town? Was it probable that this man himſelf ſhould attempt that, which, Mr. Sheridan ſaid, appeared to him to be an act of madneſs? Is it moſt likely that he ſhould have attempted this with hopes of ſucceſs, with or without aſſiſtance? This is matter for your conſideration. It is very likely you have foreſtalled all the obſervations I have made; but ſtill it was not leſs my duty to make them. The whole of this caſe is for your deciſion. It is a caſe in which the intereſts of the individuals, as well as of the Public, are highly embarked.

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At eleven o'clock at night the Jury retired; and after being out about an hour, they returned with the following verdict:

The Earl of Thanet, } *Guilty.*
Robert Fergusson, Esq. }
Denis O'Brien, Esq. *Not Guilty.*

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*Friday, 3d May.*

Mr. Attorney-General—In this caſe of the King againſt Sackville Earl of Thanet and Robert Fergusſon, Eſq. I have to pray of your Lordſhips the Judgment of the Court.

Lord Kenyon *(to* Mr. Erskine*)*—Have you any thing to ſay for the two perſons convicted?

Mr. Erskine—The cauſe having been tried at Bar, your Lordſhips are already apprized of every thing I could have to offer. I believe Lord Thanet and Mr. Fergusſon wiſh to ſay ſomething to your Lordſhips.

*LORD THANET:—*

My Lords, Before the Sentence is pronounced, I beg leave to addreſs a few words to the Court:—not for the purpoſe of impeaching the veracity of the witneſſes for the proſecution, or of arraigning the propriety of the Verdict; on thoſe points I ſhall

I ſhall ſay nothing. What I mean to ſubmit to the Court is, a ſhort, diſtinct narrative of the facts, as far as I was concerned in them.

I attended the trial at Maidſtone in conſequence of a ſubpœna. When I had given my evidence, I retired from the Court, without any intention of returning, until I was particularly requeſted to be preſent at the defence made by Mr. Dallas, the priſoners' Counſel. At that time I had never heard of the exiſtence of a warrant againſt Mr. O'Connor, nor of any deſign to ſecure his perſon if he ſhould be acquitted.---The place I ſat in was that which Mr. Dallas had quitted, when he removed to one more convenient for addreſſing the Jury. While ſitting there, I heard, for the firſt time, from Mr. Plummer, that he had reaſon to believe there was a warrant to detain Mr. O'Connor. When the verdict was pronounced, I went into the Solicitors' box, to ſhake hands with Mr. O'Connor, which I did without even ſpeaking to him. Many others preſſed forwards, apparently for the ſame purpoſe. Upon a call for ſilence and order from the Bench, or from one of the Officers of the Court, I immediately ſat down on the ſeat under that part of the dock where Mr. O'Connor ſtood. At that period ſome confuſion aroſe, from ſeveral perſons attempting to get towards him, one of whom ſaid he had a warrant to apprehend him, for which he appeared to me to be reprimanded by Mr. Juſtice Buller, in ſome few words, which I did not diſtinctly hear. The moment the Judge had paſſed ſentence on O'Coigly, a moſt violent puſhing began from the farther end of the ſeat on which I ſat. From the ſituation I was in, I did not perceive that Mr. O'Connor was attempting to eſcape. He was a good deal above me, and I ſat with my back to him. I continued ſitting in my place, until ſeveral perſons on the ſame ſeat were ſtruck, among whom, I imagine Mr. Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never ſaw before or ſince to my knowledge. I then began to feel the danger I was in; but the tumult increaſed about me ſo rapidly, that I was unable to get over the railing before me. I ſtood up, however, and uſed all the efforts in my power to go towards the Judges, as to a place of ſafety; but at that moment, by ſome perſon or other, I was borne down on the table, where a man (I afterwards found was Rivett) ſtruck at me ſeveral times with a ſtick, which I warded off, as well as I was able, with a ſmall walking-ſtick.---Rivett, as he ſtruck me, charged me with ſtriking him firſt, which I denied, and called out to him, as loud as I could, that I had not ſtruck him.

I have now detailed, as clearly as I am able, my ſituation and conduct, during the diſturbance; and I do moſt ſolemnly declare, on my word of honour, which I have been always

taught to conſider as equally ſacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do ſo, that I never did any one act but what was ſtrictly in defence of my perſon. It is not at all unlikely, that, in ſuch a ſcene of confuſion, I might have puſhed others, who preſſed againſt me, to ſave myſelf from being thrown down; but I moſt ſolemnly deny that I lifted my hand or ſtick offenſively, or uſed any kind of violence to any perſon. I declare upon my word of honour, that I knew nothing of the exiſtence of a warrant to detain Mr. O'Connor, until I heard it from Mr. Plummer; and that, even then, it never entered into my mind that it was to be ſerved upon him in the Court, until ſome perſon called out that he had a warrant. I declare upon my word of honour, that the obſtruction which the officers met with on the ſeat where I ſat, was perfectly unintentional on my part, and was ſolely owing to the ſituation I was in:—that I did nothing offenſively, but, on the contrary, was violently attacked and aſſaulted; and that I retired from the ſcene of confuſion as ſoon as I was able. And, finally, I do moſt ſolemnly declare upon my word of honour, that I did not concert with any perſon the reſcue of Mr. O'Connor, by violence, or by any other means whatſoever; that I had no idea of doing it alone; and that I was not privy to any conſultation of other perſons, either for the purpoſe of reſcuing Mr. O'Connor out of the cuſtody of the Court, or of preventing the execution of the warrant.

As I hold myſelf bound to ſtate fairly, not only what I did, but what I ſaid, as far as it is in my power to recollect what paſſed, with the agitation of ſuch a tumult on my mind, I acknowledge that ſome words may have eſcaped me, which I ought not to have ſpoken. I am charged with having ſaid, "that I thought "it fair that he ſhould have a run for it." I will not diſpute about the exact words. I confeſs they were extremely inconſiderate. Some allowance, however, I think, may be made for the inſtant feelings of a man ſo ill-treated as I had been.

My Lords, I am not ſanguine enough to expect any immediate advantage from theſe declarations. I know they will not avail me againſt the Verdict: but the truth of them will not be ſuſpected by thoſe who know me; and hereafter, when all the circumſtances of this tranſaction ſhall be coolly re-conſidered, I am confident they will have weight with the Public.

"My Lord, I have an affidavit prepared, if your Lordſhip will accept of it."

LORD KENYON.—To the ſame effect?

LORD THANET.—Yes, my Lord.

LORD KENYON.—We cannot here receive an affidavit, againſt

Lords, I can ſafely acquit myſelf of this part of the charge, becauſe my reaſon, as well as my conſcience, tells me, it is the laſt offence I am capable of committing.

I appear, however, before your Lordſhips, to receive that judgment which your duty calls upon you to pronounce, in conſequence of the verdict of a Jury.—That verdict I do not mean to arraign: it was given on contradictory evidence, the value and balance of which it was the peculiar province of the Jury to weigh and to decide.

But if your Lordſhips' long practice in Courts of Juſtice ſhall have ſhewn you the fallibility of human teſtimony,—if it ſhall have ſhewn you, ſtill more, the fallibility of human judgment founded upon human teſtimony, I hope I may meet with your indulgence, if I here make a ſolemn declaration of that, with reſpect to which I alone *cannot* be miſtaken.

My Lords, upon the occaſion which has given riſe to theſe proceedings, I was of Counſel for one of the priſoners who was tried at Maidſtone. I was ſeated in the place which was allotted for the Counſel for the priſoners; and being wholly engaged in the diſcharge of my duty, I ſolemnly aver, that whatever might be the previous conſultations or converſations of others, with reſpect to the practicability or impracticability of a reſcue, I never had even heard the rumour that a freſh warrant was in exiſtence, until after the Jury had retired to conſider of their verdict. It was not till after they had ſo retired, and very ſhortly before they returned into Court, that I learned that circumſtance. I was in my place, ſeated where I had been during the greater part of the day, at the moment when the verdict was delivered; and I do moſt ſolemnly aver, that from that moment until I was preſſed upon by the crowd, I did not ſtir from that ſeat. I do farther declare, that when I was forced upon the table, I uſed no violence to any one; that the whole of my endeavours went to allay the ferment, and to remove thoſe of my friends whom I loved and regarded, from the ſcene of diſturbance, in order that they might not be implicated in any charge that might afterwards be brought againſt thoſe who were the authors of it.

I can therefore ſay, in the preſence of this Court, and under the eyes of my countrymen—that which, in the name of my God, I have already ſworn—that I am innocent of this charge.

*Here Mr. Ferguſſon put in an Affidavit, which he had previouſly ſworn.**

Mr.

* *AFFIDAVIT.*

ROBERT FERGUSSON, of Lincoln's Inn, Eſq. one of the ſaid Defendants, maketh Oath, and ſaith, that he was of Counſel aſſigned by the Count

Mr. Attorney-General—My Lords, in this ſtage of the buſineſs, I have very few obſervations to offer to your Lordſhips' attention.—My Lords, there is one fact eſtabliſhed beyond all doubt—I mean, that, at the trial at Maidſtone, there happened a proceeding diſgraceful to the country, inconſiſtent with the ſecurity of the adminiſtration of its juſtice, and which was in its nature ſuch as moſt imperiouſly called upon me to uſe thoſe means which the law had placed in my hands, to check ſuch proceedings in future.

My Lords, I owe it to the Noble Peer who ſtands before me, and I owe it to the Learned Gentleman who has been bred to my own profeſſion, and I owe it to myſelf and to the public, to declare to your Lordſhips, that no inducement could have perſuaded me to inſtitute this proſecution, but a conviction, produced by that evidence which was laid before me, that the Noble Lord and the other Defendant were juſtly implicated in the charge. My Lords, I am very far from ſaying, that ſuch a ſpecies of information as fully juſtifies and makes it my bounden duty to inſtitute a proſecution, is always, therefore, that ſpecies of information upon which a verdict is due from the Country againſt the Defendants. It was my buſineſs to inſtitute the inquiry;

Court for John Allen, one of the Priſoners indicted with Arthur O'Connor, for High Treaſon, at a Special Seſſion held at Maidſtone in May laſt. and that as ſuch Counſel he was employed in Court during the whole of the day, in the night of which the riot charged in the information took place; he ſaith that he neither knew or had heard of any freſh warrant againſt the ſaid Arthur O'Connor, until the Jury had gone to conſider of their verdict, and very ſhortly before they returned to deliver it. And this Deponent further ſaith, that he was in the place allotted to him as Counſel, when the Jury returned into Court with their verdict; and that about that time he complained to the Court of the interruption which was given to its proceedings by the violence of a perſon who was preſſing forward between the Priſoners and the Court; and that upon the complaint of this Deponent, Mr. Juſtice Buller ordered the ſaid perſon to be quiet. And this Deponent further ſaith, that from the time when the Jury returned with their verdict, until after ſentence was pronounced and the diſturbance began, the ſaid Deponent remained in his place as Counſel, and did not leave it until compelled by the violence of thoſe who preſſed upon him from the bench behind. And this Deponent farther ſaith, that when forced upon the table, he uſed no violence to any one, but uſed every means in his power to allay the ferment, and ſave the Earl of Thanet from the blows of John Rivett, without offering any violence to the ſaid John Rivett. And this Deponent farther ſaith, that he had not, during any part of the diſturbance, any ſtick, ſword, or other weapon in his hand, and that he did not uſe or offer violence to any one. And this Deponent farther ſaith, that he neither attempted to reſcue the ſaid Arthur O'Connor, not did he at any time agree with others to attempt ſuch reſcue, nor was he in any way aiding or aſſiſting, nor did he at any time agree with others to aid or aſſiſt the ſaid Arthur O'Connor, in any attempt to be made by him to eſcape.

ROBERT FERGUSSON.

*Sworn in Court the 3d day of May* 1799,
*By the Court.*

inquiry; and if this cauſe had been tried before one of your Lordſhips only, or if it had been tried before any other Judges, and the circumſtances of the trial had been reported to your Lordſhips, it might have been my duty to have enlarged now upon the proceedings which paſſed upon the day of the trial. The whole caſe, however, was before all your Lordſhips: your Lordſhips know with what diligence it was inveſtigated: your Lordſhips know with what abilities it was defended: your Lordſhips know what evidence was given upon the defence; and your Lordſhips, alſo, cannot be ignorant what evidence might have been given, if that defence could have been ſuſtained.

My Lords, my principles with reſpect to all perſons of rank, operating as fully with regard to Lord Thanet as any man, and my habits with reſpect to my brethren in the profeſſion, I aſſure your Lordſhips', would preſs me at preſent, if I ſtood under a more convincing ſenſe of duty, that it was my buſineſs to addreſs your Lordſhips at large: What I had in view in this matter was this—to inform the ſubjects of this country, that in Great Britain we have the true equality, equality under the Laws; that the laws will afford protection, on the one hand, to the man in the pooreſt condition, againſt the man who would oppreſs him; and that the Law, on the other hand, will ſecure the man in the higheſt condition in the enjoyment of that of which the pooreſt might wiſh to deſpoil him, and that the law will protect the public equally, and under equal ſanctions, againſt the rich and againſt the poor, who are ſeeking to violate that Law—againſt the man of rank, and the man of no rank.

My Lords, having made theſe obſervations, I feel it to be my duty, addreſſing your Lordſhips with reſpect to theſe Defendants, as I would addreſs your Lordſhips with reſpect to the pooreſt individuals in the country,—I feel it to be my duty to forbear any obſervations upon any thing which your Lordſhips have heard. The only one that I could make with propriety would be, to join in the application, that what your Lordſhips have heard may have all the weight due to it; I mean, due to it according to the principles upon which your Lordſhips here adminiſter juſtice; and I am ſure your Lordſhips will pay attention to it in caſes of the loweſt degree as well as of the higheſt.

Having done my duty to the Public, according to what my notions of my duty require of me, I cannot do better than leave the caſe where it is, and to call upon your Lordſhips to do that which is right between theſe Defendants and the Public.

Lord Kenyon.—You have not alluded to any particular puniſhment that you ſuppoſed to be annexed to the offence.

The

The indictment that has been read to us, diſcloſes an offence, which, though it is not new in our Law-books, is rather new in the particular times in which we live. Nothing of the kind has recently happened; and the Court is certainly in an extremely anxious ſituation. A conſiderable degree of anxiety always attends the execution of the criminal juſtice of the country. Some caſes adminiſter more anxiety than others; and this, to ſay no more of it, is a caſe of great anxiety to thoſe who are to adminiſter the juſtice of the country in this caſe. We are to obtain information, as well as we can, by means of thoſe who are advocates, eſpecially when we are attended on each ſide as we are attended in this caſe, which calls upon them for aſſiſtance before we pronounce judgment. You may be ſure we have not come to this ſtage of the proceeding without having conſidered and reconſidered the caſe of theſe parties; but ſtill juſtice is better adminiſtered when we have all the aſſiſtance that can be given us: therefore we wiſh, on a future day, to have it argued, whether the Court have any diſcretion in the ſentence they are to pronounce? If there is a ſpecific ſentence, our diſcretion is taken away: the diſcretion is elſewhere, and not in a Court of Juſtice. If a man is convicted of murder, we have no diſcretion; but judgment of death muſt be pronounced: and ſo, in other caſes, where a ſpecific puniſhment is annexed by the law, it takes away all diſcretion from the Court. We wiſh, therefore, that it may be looked into and brought forward on ſome future day, that the Court may have all the aſſiſtance that the Bar can give it. At preſent we cannot expect that aſſiſtance, It muſt ſtand over till the next Term; and in the mean time, unleſs ſomething is ſaid to the contrary, theſe two perſons muſt be committed.

Mr. Attorney-General—As to what your Lordſhip has intimated with reſpect to the ſentence, I ſhould have felt myſelf in ſome degree blamable, if I had not conſidered that queſtion. I do not mean to tell your Lordſhips that I have come to the right concluſion, becauſe that is for your Lordſhips' judgment: but, unleſs I miſtake the caſe, this is a caſe for diſcretionary puniſhment; and I will tell your Lordſhip why, unleſs your Lordſhip tells me that this is not the proper time to ſtate it.

Lord Kenyon—If you chooſe to argue the point, the Court will be very glad to hear you.

Mr. Attorney-General—I conceive that, if this had been an information for a reſcue, there it would have been a ſpecific ſentence. I conceive alſo, that, if they had been indicted for actually ſtriking in Court, there it would have been

been a ſpecific ſentence: but this is an information for an endeavour to reſcue.

Lord Kenyon—Have you looked at all the counts in the indictment?

Mr. Attorney-General—I have read the information an hundred times.

Lord Kenyon—You ſee, Mr. Attorney-General, we cannot but have a great deal of ſolicitude to go upon the beſt information; becauſe, if there is a ſpecific puniſhment attached to this offence, and we do not conform to it, a writ of error will lie, and there is an end of the judgment.—Writs of error have been brought where the ſentence has not gone up to the extent of the puniſhment.—Not only in caſes of treaſon, but alſo in other caſes, judgments have been reverſed.—We muſt, therefore, take care, in giving our judgment, that it is conformable to law.

Mr. Attorney-General---I certainly feel that the beſt execution of my duty will be, to attend to what your Lordſhips was pleaſed to intimate; and with reſpect to any information I can give the Court, any day they ſhall appoint, it will be a duty incumbent upon me, as well as my inclination to give it---It is neceſſary, however, that I ſhould ſay this, that I do not pray a ſpecific judgment, becauſe I conceive I am not entitled to it.

Mr. Juſtice Groſe---Upon what ground, Mr. Attorney?

Mr. Attorney-General---As I underſtand the ſubject, if there was an actual reſcue, it is a ſpecific Sentence: ſo I apprehend alſo, if there is an actual ſtriking, and the offence is laid to be *coram Domino Rege*, then it is a ſpecific puniſhment; but here it is an endeavour to reſcue.

Lord Kenyon---It is expreſsly declared to be in the King's Court, in the preſence of the Juſtices.

Mr. Attorney-General---I think your Lordſhips will find it ſettled long ago.

Lord Kenyon---It is on that very ſubject that hereafter we wiſh to have information.

Mr. Erskine---Your Lordſhip intimated that the Noble Lord and the Learned Gentleman muſt be committed, if nothing was ſaid to the contrary: his Grace the Duke of Bedford, and the Earl of Derby, are attending to offer themſelves as bail.

Lord Kenyon---That muſt depend upon the Attorney-General.

Mr. Attorney-General---My Lord, I feel that I ſhould not do my duty as Attorney-General of England, if I

was

was to make any difference between Lord Thanet and Mr. Fergusson, and any other Defendants in this Court.

Lord Kenyon---We will give some early day in the next term.

Mr. Justice Grose---The Gentlemen who are of Counsel for the Defendants, will be so good as look very particularly into the form of this Information: We have looked into it, as our duty was, with great attention, and we find it to be a case of great difficulty.

Mr. Erskine---Your Lordships may depend upon all the assistance that I can possibly afford.

Mr. Justice Lawrence---There is a case in Croke Charles expressly stating that the offence may be laid *coram Domino Rege*, or in the presence of the Judges---Do you know of any other case?

Mr. Attorney-General---There is a case in Owen.

Mr. Justice Lawrence---That is the same case as in Cro. Eliz.

Lord Kenyon---The cases in Croke Eliz. are said to be not of such great authority as those in the latter part of Croke's lifetime: I remember to have heard Mr. Justice Forster say so.

As soon as you are prepared, the beginning of the next term, to argue it, we shall be glad of your assistance.

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*Monday* 10*th June.*

Mr. Attorney-General---My Lords, I have the honour of addressing your Lordships on the part of the prosecution, in the case of Lord Thanet and Mr. Fergusson; and to inform you, that since my last address to the Court on this subject, I have received, and have now in my hand, His Majesty's royal command to cause to be entered a *nolle prosequi* on such parts of this Information as have in fact raised any doubt whether the judgment of the Court is discretionary. My Lords, in obedience to His Majesty's royal will and pleasure, I have accordingly caused to be entered a *nolle prosequi* on the first, second, and third counts of the Information. My Lords, His Majesty's gracious disposition has, of course, made it my bounden duty not to act on these Counts of the Information with respect to the nature of the judgment on which any doubt might have been entertained.

In obedience to what your Lordſhips were pleaſed to intimate, I certainly had taken the pains to make an extremely laborious inveſtigation and reſearch into the grounds on which I conceived this point turned. The reſult, certainly, has not been unſatisfactory to myſelf; but my duty at preſent, in obedience to His Majeſty's commands, is, to pray judgment on the fourth and fifth counts of this Information. My Lords, your Lordſhips will allow me barely to ſtate, that theſe counts charge a conduct highly dangerous, and utterly inconſiſtent with the orderly, and therefore with the ſafe adminiſtration of juſtice.

My Lords, I conclude what belongs to the duties of my office, by repeating again, in the preſence of your Lordſhips and of the Public, that my motive in commencing this proſecution was to ſecure the orderly and ſafe adminiſtration of juſtice; and while His Majeſty does me the honour to entruſt me with the execution of the duties of this office, in the diſcharge of my duty to him as the great Conſervator of Public Juſtice, in the diſcharge of my duty to his people, his ſubjects, for whom the juſtice of the country is adminiſtered, I think it not improper to add, that I ſhall vindicate the honour of the Laws, and the ſafety of thoſe who adminiſter them, on every occaſion, and by every means within my power.

Mr. Juſtice Groſe---Sackville Earl of Thanet, and Robert Ferguſſon, you, and each of you, have been found guilty of a miſdemeanour, by a verdict of a Jury of your country, on an Information filed againſt you by His Majeſty's Attorney-General, charging you with a riot, and an endeavour, in open Court, before His Majeſty's Juſtices of Oyer and Terminer, to reſcue Arthur O'Connor out of the cuſtody of the Sheriff, in which he had been detained during and after the trial for high treaſon, and thereby to enable him to go at large. There are ſome counts, ſtating it to have been accompanied with violence; but of thoſe I have no occaſion to take notice. Other counts charge you with having made a riot and diſturbance in one of His Majeſty's Courts of Juſtice, and interrupting and obſtructing His Juſtices in the lawful and peaceable holding of that Court.

The offences charged againſt you are ranked amongſt the higheſt and moſt atrocious miſdemeanours that can be committed in a country whoſe pride, whoſe boaſt, whoſe comfort, conſiſt in the free and uncontroled adminiſtration of its laws. Language cannot deſcribe your offence more forcibly, and more eloquently, than that which your Counſel uſed, when he ſtated, that it was properly attacking Juſtice in its Sanctuary. Impreſſed with the importance of this trial, as it concerned the Public and the parties accuſed, the Counſel on each ſide, in a

moſt

moſt awful and exemplary manner, diſcharged their reſpective duties. The Attorney-General contented himſelf with ſtating the law, as delivered down to us by our anceſtors---with ſtating the facts to which that law was applied; and he ſtated them as became an advocate of the Public, plainly, but perſpicuouſly, without a ſingle comment of aggravation.

At the cloſe of the caſe proved for the Crown, upon an intimation dropped by the Counſel that the evidence of ſome of the Defendants might be material in exculpation of others of them, a queſtion was put by the Court to the Attorney-General, whether he thought the caſe was ſo clearly proved againſt two of the Defendants, as to make it neceſſary for their Counſel to proceed in their defence. The Attorney-General, knowing that, in an Engliſh Court of Judicature, offences were to be plainly proved, and not to reſt on doubtful evidence, conſented to their acquittal; and they were immediately pronounced Not Guilty, that ſuch other of the Defendants who thought their evidence neceſſary to their exculpation, might have the benefit of their teſtimony. Your Counſel have eminently diſcharged their duty. The Law ſtated by the Attorney-General was admitted. The evidence of the witneſſes to be called for the Defendants, was accurately and perſpicuouſly ſtated; and every argument that ingenuity could ſuggeſt, taken in to its aſſiſtance. Every advantage that the moſt perſuaſive eloquence could give it, was uſed, to prove the improbability of the facts inſiſted on by the Crown, and to eſtabliſh your innocence.---As to the Jury, their conduct was moſt exemplary. Called from their diſtant homes in another county, they obeyed the commands of Juſtice; they attended us with patience, and determined with deliberation: their attention was evident from their diſcrimination; they acquitted one Defendant, and pronounced you guilty. The evidence was, in fact, convincing.---Whoever recollects the prominent features of the caſe, as they were proved on the part of the Crown, and that which was not proved on your part, can hardly entertain a doubt of the propriety of the verdict. We cannot but remember the looſe rumour, in the town of Maidſtone, of a warrant to detain Arthur O'Connor, in caſe he ſhould be acquitted. There was an affected doubt whether it would be ſo, and that publicly notified; and there was as publicly a declaration from your Lordſhip---whether from a knowledge of what was intended on mature deliberation, is beſt known to yourſelf---there was a declaration, that it was fair that he againſt whom there was known to be a warrant for High Treaſon, ſhould have a run for it. I cannot but remember the attempt of you, Robert Ferguſſon, againſt your better knowledge, to induce the Court to believe, that the officers who were known to be ſent by

perſons authorized to ſend them, were the occaſion of the tumult, when they were executing the very act which, within your knowledge, it was their duty to execute. We cannot but recollect how ſtudiouſly you were placed in a ſituation well calculated to obſtruct the officers, and to effect the reſcue of Arthur O'Connor.

Obſerving therefore theſe, as well as the more minute circumſtances, I wonder not the Jury pronounced you Guilty of that intention, of which your witneſs, on his oath, did not dare to affirm he believed you innocent.*

Thus tried, and thus defended, you ſtand convicted, by an Engliſh Jury, of an offence (to the honour of modern times I ſpeak) which has been unheard of in this kingdom during the preſent century.---I know not whether, in all its parts, there was at any time ſo ſingular a tranſaction as the conviction of two perſons, of whom the one is a Peer of Parliament and an Hereditary Sheriff, the other a miniſter of one of His Majeſty's Courts of Juſtice---combining to break the peace in the face of that Court that had been aſſembled to try men accuſed of the greateſt offence to Society the law knows, High Treaſon---attempting to reſcue from the arms of the law a man, acquitted, it is true, of one High Treaſon, but charged with another---how juſtly, is not here the queſtion. Certain it is, if his conſcience could have whiſpered him that he was innocent, it was not probable he would have deſired to eſcape. As certain is it, that thoſe who believed him innocent, would have beſt conſulted his reputation, as well as their own, by finding

* Either I miſtake wholly the evidence of Mr. Sheridan, or that gentleman did ſay upon his oath, not only that he *believed us to be*, but that we *poſitively were* innocent of every thing with which we were charged. He ſwore that he obſerved us, and that we did *not* commit any one of the acts of riot and outrage imputed to us by the information.

It is true that in his croſs-examination, being aſked, whether he believed that we *meant to favour the eſcape of Mr. O'Connor?* he anſwered, that his *belief* was that *we wiſhed Mr. O'Connor might eſcape*. Mr. Sheridan, no doubt, judging of the feelings of others by his own, *believed*, that thoſe who might think Mr. O'Connor an innocent and a perſecuted man, would have been *glad that he had eſcaped*. This is the belief of Mr. Sheridan as to the ſuppoſed exiſtence of a certain *ſenſation in our minds*. But ſurely our guilt or innocence did not depend upon what we wiſhed, but upon what we *did*. It is one thing to have *felt a wiſh* that Mr. O'Connor might eſcape (which, whether we felt or not, no witneſs can with certainty ſay), and another to have attempted, by acts of violence and deſperation, to *reſcue him*.

It was truly ſaid that to have attempted to reſcue Mr. O'Connor would have been an "act of inſanity," the thing being *impracticable*. But it appears to me that it would have been an act of ſtill greater inſanity, if the thing had been *practicable*. We were, it ſeems, to become felons or traitors ourſelves, that Mr. O'Connor might eſcape! In judging of the probabilities in this caſe, I ſhould have had no objection that each of my Jury had put the queſtion to himſelf, "Is there any friend for whom I would do as much?" R. F.

finding for him an opportunity, if otherways he had not one, of proving himſelf innocent.

This is an offence very little known in this country; becauſe, from their cradles, Engliſhmen are taught, that the proud diſtinctions they can boaſt between this and moſt other nations upon earth, is the regular and uninterrupted adminiſtration of its laws, without which no nation can be free; and without which moſt governments muſt be intolerable. Rare, however, as this offence has been, our anceſtors, ſenſible of its enormity, ranked it in a claſs of crimes next to felony. Feeling the abſolute neceſſity of preſerving ſacred that peace, that decorum, that awe, which is one of the very firſt principles of the adminiſtration of juſtice as due to its Courts, they adopted a remedy by a puniſhment all but capital.----So we read in our earlieſt law-books. I ſhall obſerve, it is a remedy not to be found among our written ſtatutes, but known from the earlieſt times, and interwoven with the very Conſtitution. Human ingenuity is not equal to the taſk of impoſing a puniſhment adapted to every poſſible caſe.---I am aware of the imperfections of human nature, of the finite extent of human wiſdom, and of the impoſſibility of affixing puniſhments exactly ſuited to every ſhade and gradation of crimes: they will vary as much as the inteilects, paſſions, and depravity of one man will exceed thoſe of another. The ſame wiſdom in our Conſtitution has provided a remedy for this defect, by veſting in the King the brighteſt ornament of the Crown, the prerogative of Mercy---that beautiful appendage of royalty, by which his grace may mitigate, but his power cannot add to the ſentence of the law. Moſt ſincerely do we rejoice that ſuch is the Conſtitution of this Country.---- By a humane mind, the taſk impoſed upon this Court, of paſſing diſcretionary ſentences on crimes, would not be to be borne, if we were not ſupported by the conſoling reflection that there reſides elſewhere a power that can mitigate, and a wiſdom that can correct, thoſe errors which we, who know we are but men, feel that we, as men, may be liable to commit.----This ſhews, too, the wiſdom of our anceſtors in committing this ſacred truſt to the Sovereign. To the diſcreet and amiable exerciſe of the prerogative of his Mercy, that which has paſſed this day, the declaration which His Majeſty has given by his Attorney-General, amply bears witneſs. The benevolent exerciſe of the one, proves the wiſdom of the other. Thoſe counts which deſcribe an offence that muſt have been followed by a ſpecific ſentence, are, by order of the King, now abandoned: they are no farther to be proſecuted; and nothing of them will in future, I hope, be remembered, except the extreme danger and puniſhment attending the crime, and the Sovereign's grace in not requiring the ſentence of the law

to

to be inflicted on thoſe who have been pronounced Guilty of having committed it.

Your feelings cannot be gratified, on this occaſion, by this ſeaſonable and benevolent exerciſe of the prerogative, more than are the feelings of thoſe on whom the painful taſk is impoſed, of adminiſtering the Penal Juſtice of the Country.---Much however, as has been remitted---much, too much, ſtill remains on this record, to be paſſed over without animadverſion, or conſiderable puniſhment. The offence deſcribed in the 4th and 5th counts, on which it is incumbent on this Court to give Judgment, I muſt ſtate again:---It is, that you, with others, unlawfully, and maliciouſly, to prevent the due and peaceable holding a Seſſion of Oyer and Terminer, during the continuance of that Seſſion, in the preſence of the Juſtices and Commiſſioners, did unlawfully, and tumultuouſly aſſemble to prevent the due and peaceable holding of it, and did unlawfully, riotouſly, and tumultuouſly, make a very great noiſe, riot, and diſturbance, and did thereby interrupt and obſtruct the Juſtices and Commiſſioners from the peaceable holding of that Seſſion. Thus you are convicted of having broken the Peace, violated the Law, and of having interrupted the Adminiſtration of Juſtice, in the preſence of His Majeſty, virtually repreſented by his Judges and Commiſſioners, ſent by him to do juſtice to his people.

The horror and diſmay this tumult neceſſarily occaſioned to the mind of every man feeling for the honour of his country, and the ſupport of its deareſt rights, in preſerving unſullied the proceedings of its Courts of Juſtice, it is more eaſy to conceive than to deſcribe; and yet by one witneſs it was deſcribed as an idle panic.---I was aſtoniſhed at the phraſe, recollecting the evidence of the Learned Judge who was a witneſs to this diſgraceful ſcene, and whoſe veracity and firmneſs no man who knows him will doubt; I ſay, recollecting that he, on his oath, ſtates he felt great alarm, and thought himſelf and the other Judges in great danger (and to the truth of that aſſertion the record bears witneſs), in this attempt to obſtruct the juſtice of the country.

One great aggravation, in the caſe of you Sackville Earl of Thanet, is the very high and important ſtation you hold in the country, the duties of which ſtation muſt have ſuggeſted to you how incompatible with your dignity, how inconſiſtent with peace and order, and with the principles upon which civil ſociety is formed, your conduct on this occaſion has been. As a great Peace Officer of the Crown, as Hereditary Sheriff of an opulent and populous county, your duty called upon you to be the firſt man to keep the peace there, and to be the laſt man to break it any where. As a Peer and Hereditary Judge, you ſhould have had in conſtant memory the decorum, the reverence, and the ſolemnity due to a Court of Juſtice. By your conduct you

ſhould

ſhould have contributed to them yourſelf, and by your example enforced the ſenſe of them to others. As a Legiſlator, you muſt have known how vain it is to make laws, if the obſervance of them is not to be enforced; and on the tablet of your memory this everlaſting truth ſhould have been engraven, that the rank, and honours and dignities you enjoy, are the fruits of good order, of that good order which is eſſential to the preſervation, as well as to the eſtabliſhment of a well-regulated Monarchical Conſtitution. Be aſſured, that if the time ſhould ever arrive (which God forbid) when the boundaries of the orders of the Conſtitution are broken down, that very inſtant your rank, your offices, your ſtation, your honours, unſupported by the law of the land, muſt crumble into duſt.

As to you, Robert Ferguſſon, my farther addreſs will relate to you, as a Gentleman called to practiſe at the Bar of an Engliſh Court of Judicature, as a member of a Profeſſion as proud, as independent, as honourable, as any that exiſts among men. Your reſpect for that Profeſſion, your duty to your Sovereign, your love for your Country, ought to have been motives in your breaſt powerful enough to have diſſuaded you from having permitted, much leſs aſſiſted, in any tumult which at that awful moment might diſturb the attention of the people. You ſhould have reflected on the conſequence of a crime, that baneful crime which has ever ſapped the foundation of all ſociety, and been the cauſe of the ſubverſion of all Government, in affording any the ſlighteſt chance of eſcape to a priſoner, who, it is true, had been acquitted of one treaſon, but who ſtood charged with another. It was a duty which you owed to that Court of which you were an officer, and as ſuch you were in the daily habit of being informed that a priſoner in the cuſtody of the law, can never be diſcharged, till the officer of the law in whoſe cuſtody he is placed, ſhall have an opportunity of having it certified that there is no other warrant lodged againſt him, either on the part of the Public, or any private individual. To hear this was in your daily practice: if you had indeed been ignorant of it when you went into that Court, the Learned Judge, to whoſe information you ſhould have paid reſpect, had informed the byſtanders and yourſelf that ſuch was the law and the practice. Being totally inattentive to his obſervations, you did this, which argued too cloſe a connection* with the priſoner in the intimate

* I think it neceſſary to make an obſervation here, that this expreſſion may not be conſtrued in a ſenſe which I am convinced the learned Judge cannot have meant it to convey.

I can certainly have no wiſh to deny, that my connection with Mr. O'Connor was the ſame as that which was avowed by the very honourable perſons who gave evidence for him at his trial. As to what has ſince been diſcloſed relative to Mr. O'Connor's views in Ireland, it ſhould ſeem that he

intimate knowledge of that which he intended to attempt, and of the means by which he meant to make that attempt. Obedience to the law is in our very firſt rudiments. The abſolute neceſſity of it, by your daily attendance in this Court, you were in the habit of hearing; and it is impoſſible you ſhould have forgotten that very material chapter on the Crown Law which follows that on the Miſpriſion of Treaſon, treating of the contempt of the King's Courts, and deſcribing accurately the offence of which you have been guilty, and for which you now ſtand to receive the judgment of the Court. Acquainted as you muſt have been with this ſubject, you ſtand here as an offender againſt your own conviction, and your own better knowledge.

To the nature of your caſe the Court has paid great attention; and upon the moſt mature deliberation on the offences contained in the two laſt counts of this Information, this Court doth order and adjudge—

That you SACKVILLE Earl of THANET pay to the King a fine of 1000 *l.*; that you be impriſoned in the Tower of London for the term of one year; and that you give ſecurity for your good behaviour for the ſpace of ſeven years, to be computed from the expiration of that period, yourſelf in the ſum of 10,000*l.* and two ſureties in 5000*l.* each; and that you be farther impriſoned till ſuch ſecurity be given.

The ſentence on you, ROBERT FERGUSSON is, that you pay a fine to the King of 100 *l.*; that you be impriſoned in His Majeſty's jail of the King's Bench for the term of one year; and that you give ſecurity for your good behaviour for ſeven years, to be computed from the expiration of that period, yourſelf in 500*l.* and two ſureties in 250 *l.* each; and that you be farther impriſoned till ſuch ſecurity be given.

*The Defendants having been committed on the 3d May, it is an impriſonment of one year and thirty-eight days.*

SOME

he had not choſen to engage his friends in a ſpecies of confidence, equally uſeleſs and dangerous, reſpecting the affairs of a country with which they had no concern.

For myſelf, I can very poſitively ſpeak: and I do here moſt expreſsly and unequivocally diſavow the having had, at any period, any knowledge (farther than that which might have been collected by every perſon from common report or converſation) of the views or ſchemes of any individual or body of men, ſuch as have been diſcloſed to the world by the Reports of the Secret Committees of the two Houſes of Parliament in Ireland.

This is the ſimple declaration of a fact which I feel myſelf called upon to make; and by which I do not mean to give either praiſe or cenſure to the conduct of any man, whoſe misfortune it has been to have had a ſhare in the politics of that unhappy country.

ROBERT FERGUSSON.

# THE KING

*versus*

THE EARL OF THANET AND OTHERS.

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# SOME OBSERVATIONS,

BY

# ROBERT FERGUSSON,

ON

# *HIS OWN CASE,*

AND ON

# THE POINTS OF LAW

ARISING UPON THE INFORMATION.

# SOME OBSERVATIONS

ON

# *HIS OWN CASE;*

BY

## ROBERT FERGUSSON,

ONE OF THE DEFENDANTS CONVICTED.

I SHALL begin by considering what the Charge is, as it appears upon the Record.

The Information states, that ARTHUR O'CONNOR, being in the custody of the Sheriff of Kent, was found *Not Guilty* of the High Treason with which he had been charged; and that, *before* any order or direction had been made or given by the Commissioners, or any of them, for his discharge, and *before* he was discharged, the Defendants did, *in the presence of the Commissioners*,

1. Make a riot;
2. Attempt to rescue Arthur O'Connor;
3. Aid and assist him in an attempt made by him to escape:

And that, the better to effect such rescue and escape, they did,

4. Assault and beat John Rivett, Edward Fugion, and Thomas Adams:

And that they did,

5. Obstruct and impede the Commissioners in the execution of their office.

The second Count charges, that Arthur O'Connor being in custody, &c. and before any order, &c. was

given for his discharge, the Defendants did, *at Maidstone*,

1. Aid and assist him in an attempt made by him to rescue himself, and escape:

And that, the better to effect such rescue and escape, they did,

2. Assault and beat Thomas Adams.

The third Count charges, that the Defendants did, *in the presence of the Commissioners*,

1. Make a riot,

And thereby obstruct and impede the Commissioners, &c.

2. Assault and beat John Rivett, Edward Fugion, and Thomas Adams.

The fourth Count charges, that the Defendants did, *in the presence of the Commissioners*,

Make a riot,

And thereby obstruct and impede the Commissioners, &c.

The fifth Count charges, that the Defendants did, *at Maidstone*,

Make a riot.

The charges thus variously laid in the Information, may in substance be reduced to these:

1. The attempt to rescue Mr. O'Connor;
2. The riot, assault, and battery;
3. The obstruction of the Commissioners.

The first may be said to be the *intent;* the second, the *means;* and the third is not so much a separate charge of itself, as a necessary consequence of the second, if proved. The Jury had, in fact, but two questions for their consideration:

1. Were the Defendants guilty of the riot, assault, and battery, charged?
2. If they were so guilty, was it with a view to rescue Mr. O'Connor?

To sustain a general verdict of Guilty upon all the Counts of the Information, it should have been proved, not merely that the Defendants were engaged in an affray or tumult in the Court---not merely that they were parties to

to a scene of violence---not merely that they gave blows in the course of the tumult or affray;---but it should have been proved also, that *they* were in Law the rioters; that the assault and battery charged was in Law *their* assault and battery; and it should further have been proved, *that they attempted thereby to rescue Mr. O'Connor.* Now, let us see what was the evidence, upon which a general verdict of Guilty was returned in my Case.

The Witnesses for the Crown were,

| | |
|---|---|
| Mr. Serjeant Shepherd, | Thomas Adams, |
| The Rev. Mr. Hussey, | Henry William Brooke, |
| Lord Romney, | John Stafford, |
| Sir John Mitford, | The Hon. Mr. Clifford, |
| Mr. Justice Heath, | Thomas Wagstaffe, |
| Mr. Abbot, | William Cutbush, |
| John Rivett, | —— Omrod, |
| Sir Ed. Knatchbull, | AND |
| Thomas Watson, | Col. Parker. |

Mr. Shepherd, Mr. Hussey, Sir Edward Knatchbull, Watson, Wagstaffe, Cutbush, Omrod, none of them speak to any fact which concerns me.

ADAMS and Colonel PARKER speak to something which was done by *some gentleman* in a wig and gown;* but neither of them know my person.

Lord ROMNEY speaks of an altercation he had with me about the words "*acquitted*" and "*discharged;*" which is no otherwise important than in this view, that one gentleman in a professional dress may be mistaken for another---for it was Mr. George Smith, as he himself relates, who had the altercation in question with Lord Romney.

Mr. ABBOT, the Counsel who opened the Information, says, that when the Jury brought in their verdict, I called out, "He (Mr. O'Connor) is discharged." I shall only observe, that this was before any warrant was produced, and before any direction was given by the Judge for detaining Mr. O'Connor.

Mr.

* I cannot help noticing this question, which was so often put to the Witnesses for the Crown, after they had declared that they did not know my person: "Did you see *any* "*gentleman* in a wig and gown" do so and so? Several of the Counsel who put this question were themselves in wigs and gowns upon the same occasion.

Mr. Justice HEATH, in his evidence---not pressed by any questions from my Counsel, not strictly called upon by the examination of the Counsel for the Crown, but yielding to the dictates of his own honourable mind---in speaking of my conduct, makes uſe of theſe words: "*I must do him the juſtice to say, that in the very ſhort* "*time I ſaw him, which was not above a minute or ſo, I* "*did not ſee him ſay or do any thing to encourage the* "*rioters.*"

There remains, then, the evidence of the Solicitor Ge-General, of the Honourable Mr. Clifford, of Rivett, Brooke, and Stafford.

The SOLICITOR GENERAL says, that when the Jury gave their verdict, I inſiſted that Mr. O'Connor was diſcharged; that after Mr. Juſtice Buller had pronounced ſentence on O'Coigly, he ſaw me ENCOURAGING Mr. O'Connor to go over the bar---and that *not by words*, but *actions!* He ſwears, not merely to a geſture, but alſo to the meaning of that geſture!---I have only to obſerve, that this geſture, apparently to the Solicitor General, of encouragement, might have been, and I have reaſon to believe was, the geſture with which I accompanied the words ſworn to by Mr. Bainbridge as addreſſed to Mr. O'Connor: "Be quiet, and keep your place; for nothing can hurt you." The motion of my hand accompanying this exhortation, might, and no doubt did, appear to the Solicitor General to be for a very different purpoſe.

That gentleman further ſays, that I *appeared* to him to follow Mr. O'Connor towards the narrow ſtreet of Maidſtone. Mr. Clifford agrees with him in this point: but neither of them ſwear to any aſſault or battery---to any act of riot or violence on my part---to any obſtruction given by me to the officers of Juſtice, or to any attempt of any kind made by me to reſcue Mr. O'Connor. The Verdict cannot therefore have been founded upon their evidence.

Next comes THE EVIDENCE OF RIVETT; and I need not inform any one who was preſent at the trial, that, without his teſtimony, there would not have been a caſe to go to the Jury againſt any one of the Defendants. This man ſwears, that when Mr. O'Connor jumped over the bar, he (Rivett) was prevented getting forward by perſons who had placed themſelves before him; and being aſked to deſcribe particularly what paſſed which prevented him, he anſwers, "I was pulled down, or ſhoved

"down,

" down, twice or three times; but by whom, I am not " able to say. I then jumped forward as well as I was " able, and was endeavouring to pursue Mr. O'Connor. " Mr. Fergusson jumped upon the table; and, with a " stick, flourished it in this way, to prevent my getting " forward."---" I then sprung at him, and wrenched the " stick out of his hand; and he returned back to his for- " mer situation." Rivett next describes what passed when he had thus wrenched the stick from my hand: " I " was then," says he, " knocked down by some person " who drove against me---not with a stick; and as soon as " I had recovered myself, I saw the person who had so " shoved me down, and immediately struck him." This person, he was afterwards told, was the Earl of Thanet. In his cross-examination, being asked, how long there might be between my going away and his meeting with the Earl of Thanet, he says, " a very few minutes---a " minute or two."

In the first place, the fact of my having had a stick at all, is positively denied upon oath by Mr. BAINBRIDGE, a gentleman now at the bar, who was seated immediately behind me, and had the best opportunity of obſerving the whole of my conduct. Mr. Law puts this question to him: " *Will you venture to swear, that, during the riot,* " *he (Mr. Fergusson) had no stick?*" *He answers,* " I " WILL."---Is this, let me ask, negative testimony? or, is it not a fact as positively sworn to, as that to which Rivett swears?

Mr. MAXWELL, after describing the violence with which Rivett pressed forward, and the manner in which he attacked Lord Thanet, is asked, Whether, before this attack upon Lord Thanet, Rivett could have wrested a stick from my hand? Mr. Maxwell answers, " Rivett did " not go to take a stick out of Mr. Fergusson's hand---for " he had no stick in his hand: he did not go up to Mr. " Fergusson; but immediately went up to Lord Thanet, " and struck him." Mr. Maxwell is afterwards asked, Whether, if I had not only had a stick, but had brandiſhed and flourished that stick, he must have seen it? His answer is, " I must have seen it: He was so directly " before me, that it is quite impossible but I must have " seen it. *I can swear that Mr. Fergusson had nothing* " *in his hand, but a roll of paper in his right hand.*" How is this again? is it positive or negative teſtimony? Mr. Maxwell swears, not only that I had no stick in my hand;

hand; but he swears to what I had in my hand---namely, a roll of paper.

Mr. SHERIDAN is asked, "Did Rivett attack Lord "Thanet before he possibly could have attacked Mr. "Fergusson, and wrenched a stick from his hand?" Mr. Sheridan says, "He came immediately upon Lord Tha-"net when the tumult began."---The next question is, "He could, then, have no conflict with Mr. Fergusson, "till after the conflict with Lord Thanet?" The answer is, "Certainly not."---Mr. Sheridan also says, that I had a roll of paper in my hand.

Mr. WARREN, a gentleman well known at the bar, relates the circumstances of Rivett's attack upon Lord Thanet, and then says, "Mr. Fergusson was upon "the table *afterwards*, but not upon the table at any "time I have yet spoken to;"---that is, I had not been upon the table, much less had I flourished a stick upon the table, before Rivett struck Lord Thanet, with a stick which he swears that he had wrenched from me when I *was* upon the table *some minutes before*. Mr. Warren also says, that he did not see me have a stick; and that, if I had had a stick, he thinks it impossible but that he must have seen it.

Mr. SMITH, a gentleman at the bar, who was drest in his professional habit, as I was in mine, relates, that it was *he* who had the first scuffle with Rivett; that he struggled for some time, in his own defence, against Rivett's violence; and that it was with some difficulty he succeeded in extricating himself. What happened then, according to Mr. Smith? "*The instant*," says he, "I extricated "myself, I turned round, and saw a man pressing upon "Lord Thanet; with this difference, that when I resisted "him, I did not observe that he had any staff or stick; "but when I saw him with Lord Thanet, he was striking "Lord Thanet with a stick." Mr. Smith swears, that he thinks it impossible that he could have wrenched this stick from me: But is it necessary that Mr. Smith should swear it? What must have happened *in this instant* described by Mr. Smith, *this instant which he took to turn round?* I must have jumped upon the table, attacked Rivett by flourishing a stick over his head; he must have sprung at me---struggled with me---wrenched it from my hand: I must have retreated; *then a few minutes must have elapsed;* and then, and then only, he must have struck Lord Thanet---and with what? with the stick which he

he had wrenched from me, when, if Mr. Smith speaks true, Rivett must have been engaged in a scuffle with him, *without a stick*, only an instant before.

Let us next see how Rivett's evidence agrees with that of Mr. Serjeant Shepherd, the Solicitor General, and Mr. Clifford, witnesses for the Crown.

And, first, of Mr. Serjeant Shepherd. It is necessary to keep in mind the different facts which Rivett swears to have taken place, between the time of Mr. O'Connor's jumping over the bar, and that of Rivett's striking Lord Thanet---his being shoved or pushed down several times---my getting upon the table, and advancing towards him---then my attack upon him by flourishing a stick---his springing at me, and wrenching it from my hand, and my retreat; ---his being shoved or knocked down by some person---his recovering himself, and finding that it was the Earl of Thanet---and his then striking Lord Thanet with the stick which he had wrenched from me some minutes before. What says Mr. Serjeant Shepherd? "At the "moment that Mr. O'Connor was getting over the bar, "and some persons calling to stop him, there was a great "noise certainly: Lord Thanet stood, in the way I have "described to your Lordships, in the pass: The officers "were endeavouring to press by him; and he stood, till, "I think, in a *very short space of time*, he held his stick "with both his hands over his head." In his cross-examination, Mr. Shepherd says, "Upon Mr. O'Con-"nor jumping over the bar, the officers rushed forward "to follow him: after they had made several pushes it "was that I saw Lord Thanet in that position." Here is one continued scene described by Mr. Serjeant Shepherd, from the moment Mr. O'Connor jumped over the bar, until Rivett was engaged with Lord Thanet. He traces his Lordship, he traces the officers (among whom was Rivett), during this interval; and yet, during this interval, I am said by Rivett, full in Mr. Shepherd's view, to have been engaged in a conflict in which I must have made such a remarkable appearance. And with whom was I engaged? Whom did I attack? Who sprung at me? Who wrenched the stick from my hand? Who forced me to retreat? Rivett---one of the officers whom Mr. Shepherd keeps his eye upon, and traces in his attempts to get forward from the moment Mr. O'Connor jumped over the bar until the time of the conflict with Lord Thanet. From the situation where Mr. Shepherd

was

was placed, from that which I am said to have left when I went to attack Rivett, and to which I returned when he had taken the stick from me, is it not clear, that, either in my advance upon the table, in the act of flourishing my stick, in my scuffle with Rivett, or in my retreat, I must have intercepted Mr. Shepherd's view both of Lord Thanet and of the officers?

What does Mr. Serjeant Shepherd further say? He describes Lord Thanet as acting upon the defensive against Rivett's blows, and says, "There was *then* a great deal "of confusion;---persons got upon the table." When did persons get upon the table? *When Rivett was striking Lord Thanet.* Observe how this agrees with the evidence of Mr. Warren: After describing Rivett's striking at Lord Thanet, he says, "Mr. Fergusson was *afterwards* upon "the table, but not upon the table at any time I have yet "spoken to:" and yet Rivett makes me act the strange scene upon the table several minutes *before* he came in contact with Lord Thanet!

But, perhaps, Rivett's evidence will agree better with that of the Solicitor General, and Mr. Clifford. Let us see how this is.

The Solicitor General swears, and it is very material to be noticed, that he kept his eye *particularly* upon Mr. O'Connor and me. "Mr. Fergusson," says he, "at the moment "that Mr. O'Connor jumped over the bar, turned himself "round, and appeared to me to follow Mr. O'Connor; "but I cannot positively say that he did so, because the "persons who rushed from the other side of the Court "came between me and him; but I recollect, that when "they were past, I did not see him."

The Hon. Mr. Clifford says, "When Mr. O'Connor "jumped over, they all ran off together; they followed "Mr. O'Connor, as it appeared to me:" And afterwards, "Mr. Fergusson, and the rest of them, went off towards "the narrow street of Maidstone."

Rivett says, that when he had forced me to retreat, I returned to my former situation; which situation, in his answer to the next question, he describes to be my place at the table. This he describes to have taken place when he was following Mr. O'Connor, who had just jumped over the bar. In this point, then, the Solicitor General and Mr. Clifford agree with Rivett, that at the very beginning of the disturbance, *I left my place at the table.* But what happened then? According to the Solicitor General

General and Mr. Clifford, *I left my place*, and *followed* Mr. O'Connor towards the *narrow street* of Maidstone: According to Rivett, *I left my place*, jumped upon the table, advanced towards the *main street*, and flourished a stick over his head, to prevent *his following* Mr. O'Connor! The Solicitor General kept his eye upon me, until persons rushed upon the table from the other side. Mr. Clifford swears that I went off towards the narrow street: he says, "I bent myself as far as I could, to see; when "so many people came jumping from the witness-box, "that I was almost quite overpowered:" and then he says, "They all went off to the left hand behind the "cryer's box." Mr. Clifford describes me as one of the persons who so went off: he therefore follows me with his eye farther than the Solicitor General; for he sees me join those who jumped from the witness-box, the same persons whom the Solicitor General describes to have made the rush upon the table by which means he lost sight of me. If the Solicitor General and Mr. Clifford, therefore, speak true, I cannot have attacked Rivett till some time *after* those persons rushed upon the table from the witness-box.

The Solicitor General says, "that those persons went "to the spot where the riot was, and jumped among the "rioters; *all the lights, except those before the Judges, &c. "were extinguished.*" It must, therefore, have been *after* the lights were put out, the riot general, and the confusion at its height, that I attacked Rivett; and yet, although it must have been *after* the lights were put out, and the confusion general, yet it was a considerable time, too, if we believe Rivett, *before* he attacked Lord Thanet. Yet, if Mr. Shepherd speak true, the confusion did not take place, nor were the lights put out, till *after* Rivett was striking Lord Thanet. Hear Mr. Serjeant Shepherd himself:—"He (Lord Thanet) held up "his stick with both his hands over his head: there was "*then* a great deal of confusion; persons got upon the "table, and there was a press, in this narrow pass, of "officers and persons from that side of the court, attempting to press towards the door to which O'Connor had "rushed; and other persons---whom I cannot say---appearing to me to push the other way, as if to prevent "them from passing. I saw sticks raised, and fists raised, "by individuals; but who did so, I cannot speak to. "There became *then* a *general* confusion in that part of

" the Court, so that I lost sight of particular individuals ;
" *the candles were some of them thrown down;* they
" were upon the table, and there was a general riot and
" confusion."

What period, then, of the disturbance can we fix upon, as that at which I made the attack upon Rivett?

It cannot have been at the beginning of the disturbance, *before* other persons were upon the table, and *before* the lights were put out, and the confusion general; because, *until* that period, I am traced by the Solicitor General and Mr. Clifford towards the narrow street of Maidstone. It cannot have been *after* other persons were upon the table, the lights put out, and the confusion general; because the disturbance had not reached that period, according to Mr. Serjeant Shepherd, until Rivett had struck Lord Thanet. It cannot have been *after* Rivett had struck Lord Thanet; for he swears that he struck Lord Thanet with the stick which he had wrenched from me.---SO MUCH FOR RIVETT.

The evidence of Brooke is, that I *appeared* to have a sword, or stick, or *something*, in my hand. What that *something* was, has been explained by Mr. Maxwell and Mr. Sheridan.

There remains, then, only the evidence of Mr. STAFFORD, who says, that Watson the jailor " seized the flap " of Mr. O'Connor's coat, as he was getting over, &c.; " Mr. Fergusson forced himself in between the two, and " Mr. Watson let go his hold." I shall not appeal to the evidence for the Defendants, by which this fact is flatly contradicted, particularly by Mr. Warren: I shall content myself with observing, that the Solicitor General, who kept his eye particularly upon Mr. O'Connor and *me*, did not see this; and that that gentleman describes me to have been in my place at the Counsel-table, whereas Mr. Stafford says I was in the Solicitors' seat. The Solicitor General also saw me leave my place---not to go into the Solicitor's seat, but to go towards the narrow street.

Mr. Stafford further swears, that he did not see me until he was upon the table with a drawn sabre in his hands; and that, *when* he saw me, I was assisting Mr. O'Connor to get over the bar. The Solicitor General says, that this sabre was not drawn until the rush was made from the witness-box; and Mr. Serjeant Shepherd, until Rivett was striking Lord Thanet. The rush, therefore,

fore, from the witness-box, and Rivett's attack upon Lord Thanet, must have taken place *at the moment* I was assisting Mr. O'Connor to get over the bar. Yet Rivett says that I attacked him---had a scuffle with him---had a stick wrenched from my hand---had returned to my place;---and after all this a few minutes elapsed, and *then he attacked Lord Thanet*. And Mr. Shepherd and the Solicitor General describe Mr. O'Connor as having almost got out of Court, and the whole to have been a scene of confusion *before* Mr. Stafford appeared upon the table with his sabre.

According to Mr. Serjeant Shepherd, the drawing of the sabre by Mr. Stafford, corresponds, in point of time, with Rivett's attack upon Lord Thanet:

But, according to Rivett, my attack upon him (Rivett) *preceded, by several minutes*, his attack upon Lord Thanet:

Therefore my attack upon Rivett *preceded, by several minutes*, the drawing of the sabre by Mr. Stafford.—And again,

According to the Solicitor General, the rush made from the witness-box preceded the drawing of the sabre:

According to the same gentleman, my attack upon Rivett did *not precede* the rush from the witness-box:

Therefore my attack upon Rivett did *not precede* the drawing of the sabre.

And with this I take my leave of the evidence for the Crown.

I shall only further remark, that it was proved upon the trial, that the seat in which I was placed when the disturbance began, was that which had been *allotted for me by the Court*, by whom I was assigned as Counsel for one of the prisoners. It was not a place chosen by myself; and it did so happen that I, of all the Counsel for the prisoners, was placed in that situation in which I could have been the *least useful* in giving any obstruction to the officers, if any such had been intended. It is a little hard that a Counsel, who is placed by the Court in a situation where he may be enabled to discharge his duty to his Client, should be accused of *studiously placing himself* in one where he may be useful in promoting an Escape.

I HAVE thus stated, and I hope fairly stated, the strength of the evidence against me. I have shewn in what points it is contradicted by the evidence for the Defendants; and I have examined how far, in its different parts, it is consistent with itself. I might have dwelt longer, if it had been necessary, on the unanimous testimony of five gentlemen of character and honour, who describe my demeanour as the most peaceable---my conduct through the whole of the transaction as that of a person whose object was, not to make a riot, but to prevent every thing which was likely to lead to one; and who do, upon their oath, most expressly contradict the leading fact which was sworn against me by a Bow-street Runner, and by him alone!

That there was a riot, is certain; but the question is, who were the rioters? And here let us consider how the charge is laid: it is, that the riot was made whilst Mr. O'Connor was in the custody of the Sheriff of Kent; and in fact upon his trial---for it is expressly stated, that he was not discharged. If so, what right had any officer of justice to attempt, by violence, or otherwise, to take him out of that custody, and to seize him in the presence of those Commissioners who were his judges, and who had given no orders, either for his discharge, or for his arrest? Observe, that the disturbance began with Rivett, before any order was given by Mr. Justice Buller for the detention of Mr. O'Connor; and when that order was given, it was not an order that the Bow-street officers should *arrest him in the face of the Court, before whom he was upon his trial.* What right, then, had Rivett and Fugion (of whom I complained to the Judge) to push forward with noise, and violence, and blows, certainly to the impeding and obstructing the Commissioners, and in contempt of the Court? And for what purpose? to seize Mr. O'Connor, who was then in legal custody, and under the protection of that Court, which had the right and the authority, and the means, of detaining him upon any fresh charge.

We were charged with an attempt to rescue Mr. O'Connor from the custody of the Sheriff of Kent. The obstructions given to the officers are said to be evidence of *that* attempt. I might admit that such obstructions were

were given, and still deny the conclusion---The Bow-street officers were not acting in the aid of the Sheriff: they were, on the contrary, as it appears to me, attempting, illegally, to take a prisoner out of the custody of the Sheriff; and those who obstructed them, if there were any who did so, so far from having attempted a rescue, may be said to have been acting *in the aid* of the Sheriff. But such arguments are not neceſſary for me; nor do I insist upon them. I am perfectly willing to leave my case as it stands upon the evidence on both sides, weighed, compared, and appreciated by any impartial man.

Upon that evidence, the Jury found me guilty *of all the charges* laid in the Information; that is, not only of *every thing* which was sworn to by *any one* against me, but even of that of which there was *no evidence even attempted to be given.*

I appeared, therefore, before the Court of King's Bench, to receive judgment---for what? as the Court seemed to think, for the enormous misdemeanour of STRIKING IN A COURT OF JUSTICE! Let any one peruse the evidence; and he will find, that THERE IS NOT EVEN AN ATTEMPT TO PROVE THAT I STRUCK A BLOW.

The Attorney General was directed by the Crown to enter a *nolle proſequi* upon the three first counts of the Information; and he thereby only anticipated the justice of the Court of King's Bench, which would not have pronounced judgment for an offence, of which there appeared no evidence against me, upon the notes which the learned Judges themselves took upon the trial.*

It

* If it be objected to me, that being engaged in the same unlawful design, the act of one is the act of all; I answer the objection with this case from the Year Books.

MICH. TERM, 22 ED. III.---Note, That a Knight and an Esquire were indicted, that before Robert Thorpe, a Justiciar assigned, &c. one J. made an affray, wherefore Thorpe attached him; upon which the Knight and the Esquire made contention with Thorpe, by which J. escaped, &c.; and the jury were to inquire if the Knight and the Esquire were there in order to rescue J. from the attachment, which they said Yea, and that the Esquire drew his sword to have struck Thorpe: whereupon they were arraigned, and put themselves upon the mercy of the King. Shard (Juſticiar), to the clerk: "Enter it in the roll, "and that they confeſs this." Shard to the Knight and to the Esquire: "Since that you came to rescue him attached by the "Juſticiars of the King, which is his attachment demeſne in "law,

It was my intention, if the Attorney General had not been directed to enter a *nolle prosequi* upon the three first counts of the Information, to have applied to the Court for a new trial, upon the ground that a verdict had been given against me upon those counts, *not contrary* to evidence, but *without* evidence at all. If I had been unsuccesful in this application, I meant to argue, that the punishment was *not* specific; and if the opinion of the Court had been against me upon this point also, I should have moved to arrest the judgment; and I think I should have shewn, that if the offence charged in the Information did in fact amount to that which is punishable with forfeiture, with perpetual imprisonment, and with the LOSS OF HAND, that then *I had not been tried by the* LAW OF THE LAND, and that the Record was insufficient to support ANY JUDGMENT.

I come, therefore, now to consider,

*THE POINTS OF LAW:*

And the first is, Whether the offence be so laid as to infer the specific judgment?

The cases in the Books cannot throw much light upon the subject, as none of them give the words of the indictments, and there are only two which enter at all into the reasons of the judgments. I allude to the two cases in Croke.---The indictments, of which I have copies, run thus:

T. TRIN. 37 ELIZ. ROT. 3.---Carye was indicted, for that he, at Westminster, *in Magna Aula Placitorum ibidem Curiis dictæ Dominæ Reg. (videlicet) the King's Bench and Common Pleas, eadem Aula adtunc apertis existentibus et justiciariis dictæ Dominæ Reg. in Curiis illis adtunc, et ibidem præsentibus et judicialiter sedentibus, &c. vi et armis, (videlicet) cum gladio extracto in quendam Willielmum Venables, &c. insultum fecit ea intentione ad ipsum Willielmum Venables interficiendum, &c. in contemptum, &c. et contra formam divers' statut'*.---He was found guilty, and was adjudged to pay a fine of 100*l.* and to be imprisoned for life; and as Croke reports it, Popham, C.

"law, and made contention, by which he escaped, the Court "awards that you be disherited, and have prison for all your "days, that is, to wit, the Knight at the Tower, and the Es- "quire at Newgate; and THAT THE HAND OF THE ESQUIRE "WHICH DREW THE SWORD BE CUT OFF."---This case requires no comment.

C. J. said, "Although it were out of the view of the "Court (which appeared in evidence), yet if the in- "dictment had been, as it ought to have been (and as we "have precedents in Edw. IV.), *Coram Domina Regina*, "the judgment should have been that his right hand "should have been cut off."

TR. 10 CAR.---Waller was indicted, for that he, at Westminster, *infra Palatium Domini Regis* JUXTA *Magnam Aulam Placitorum, ibidem vi et armis super quendam Thomam Reignold militem Curiis ipsius Dominæ Regis, (scilicet) Curia ipsius Domini Regis coram ipso Rege, Curia cancellariæ, et Curia de Banco in prædicta Magna Aula Placitorum prædictorum apertis et justiciariis ipsius Domini Regis in Curiis prædictis adtunc, et ibidem præsentibus et judicialiter sedentibus, &c. adtunc, et ibidem insultum et effraiam fecit, et prædictus Willielmus Waller super ipsum Thomam Reignold adtunc et ibidem gladium suum evaginare conatus fuit, ad ipsum Thomam Reignold militem, cum gladio prædicto adtunc et ibidem percutiendum in contemptum, &c. et contra formam divers' statut'*.---He was found guilty; and, as Croke reports it, "Because "the Indictment was not that he did it in the presence of "the Justices NOR in the presence of the King, all the "Judges agreed that the judgment of the cutting off his "hand should not be given."---He was fined 1000 *l.* and imprisoned during the King's pleasure.

Carye's offence is drawing a sword with an intent to kill, IN the Great Hall of Westminster, the Courts open and sitting in the said Hall, and the Justices present in the said Courts, which offence seems to be sufficiently laid in *the presence of the Justices*.---Yet the specific judgment was not passed, as it is said, because it was not alledged to have been committed *coram Domina Regina*.

Waller's offence is making an assault and affray, and attempting to draw his sword, with an intent to strike, in the *King's Palace*, NEAR the Great Hall of Westminster, the Courts open and sitting in the same Hall, and the Justices present in the said Courts. This could not be said to be laid in the *presence of the Justices*, because the offence was alledged to have been committed *out* of the Hall.---The specific judgment was not passed, as it is said, because it was "neither in the presence of the Judges, *nor* in the presence of the King."

The opinions of the Judges in the two cases, it is evident, cannot be reconciled; but which of them carries

with it the highest authority, it is not for me to determine. If we had not been furnished with the *reasons* of the Judges in either case, and that it had been left to us to draw our own conclusions by comparing the judgment in each case with the indictment on which it was founded, we should have reasoned thus:

In the one, there is a sword drawn in Westminster Hall, and an assault made in the presence of the Justices, and we can find no reason why judgment was not passed to lose the hand, BUT this, that the offence is not charged to have been committed *coram Domina Regina.* These words are, therefore, of absolute necessity.

In the other, we can find many reasons why this judgment might not have passed. 1st, There is no sword drawn. 2dly, The offence is not committed in Westminster Hall, and consequently, 3dly, Not in the presence of the Justices. 4thly, It is not laid *coram Domino Rege.* For want of one, or several, or all of these requisites, it might have been, that the judgment was not pronounced; and we should have been inclined to believe, that it was *partly*, at least, because the indictment wanted these words of absolute necessity, *coram Domino Rege.*

But giving full weight to the case in Cro. Car. to what does it amount?---That this offence, if it had been alledged to have been committed before the Justices in *Westminster Hall*, and among others (which is very material) the Justices of the King's Court *coram ipso Rege*, who are named in the indictment, and who must therefore be understood to be of the Justices of whose presence there is question in the opinion of the Court---that this offence, so committed, would have been punishable with the loss of hand.

It is worthy of remark, that neither of the offences charged in these indictments, is strictly the offence of Striking in a Court of Justice; and they could therefore, perhaps, neither of them have been fairly cited as authority in this case. Both of the indictments conclude "against the form of the statutes."---Neither of them, however, can be brought within the statute of Hen. VIII. against striking in the King's palace, there being no blood drawn. They, perhaps, both come within the statute 2 Ed. III. c. 3. whereby it is enacted, that no one "be "so hardy to come before the King's Justices, or other "of the King's ministers, during their office, with force "and arms, nor bring *no force in affray of the peace*, nor

go,

" go, nor ride, armed, by night nor by day, in fairs, " markets, nor *in the presence of the Justices*, or other " ministers, &c. upon pain to forfeit their armour to the " King, and their bodies to prison at the King's pleasure."

If the Judges in Waller's case had made it a question, whether the pains of this statute could be inflicted, because the offence was not, perhaps, strictly laid in the presence of the Justices, I could have understood it; but I confess I am quite at a loss to discover how Sir William Waller's offence could ever have been punished with the loss of hand, however it had been laid.

In Carye's case, indeed, there is a weapon actually drawn, and an assault made with that weapon, in the hall of the King's palace, where the King's Justices are present; but in Waller's case there is no weapon drawn, no blood shed, no blow actually given; and all that is charged is an assault and affray in the King's palace.

I think the opinion of the Judges in Waller's case may be evidently traced to Br. Ab. tit. Paine 16. which I take clearly not to be law. It is in these words: *Vide, cesty que fist affray in presens des Justices, et ceux que luy rescue ou trahie weapon serra disherite, et imprison in perpetuum, et lour maines Coupes titulo For. in Fitz.* 21. Now, in turning to Fitzherbert, we find that the case which he cites is that of the Knight and Squire from the Year Books, which decides nothing of the kind. It decides, that he who makes an affray in the presence of the Justices, *and* rescues, *and* (not *or*) DRAWS A WEAPON upon a Judge, shall lose his hand, and have perpetual imprisonment, &c.; but that he who makes the affray, and rescues, but does *not* draw a weapon, shall *not* lose his hand.

I observe that the word "affray" is the very word used in Waller's indictment; and I am almost inclined to think, that this passage in Bro. Abr. did in fact mislead the Judges in the opinion which they gave upon that occasion, if that reported in Croke be really the opinion given; although, at the same time, I do not admit, that that opinion, however well-founded, would have been at all decisive in this case, which is a case of striking before Justices of Oyer and Terminer, and *not* in the King's palace.

This question is therefore entire: and it is the question which I now mean to discuss.

My Lord Coke says, that the specific judgment shall be given, "If, before Justices of Assize, or Oyer and "Terminer, and within view of the same, a man doth "strike a Jurour or other," &c. 3 Inst. 140. The cases cited in the margin of my Lord Coke in support of this opinion, are, Fitz. Jug. 174. Coro. 280. Dyer 188. and Bellingham's case, 2 Jac.---Let us see whether they will bear him out in the opinion.

The case in Fitz. Jug. is put shortly thus: *Nota que N. C. fuit endite en Banke le Roy de ceo que il en presens des Justices ferist (struck) un Jurour.* But this was a striking in Westminster Hall; and the Record, which is in the Crown Office, states the affray to have begun in the King's Court, *coram ipso Rege*, and that the blows were given by the door of Westminster Hall, *coram Johanni de Malton et sociis suis*, Justices of that Court.---19 ED. III. ROT. 55.

The case in *Fitz. Corone* is in these words: *Homme fuit endite et arraigne de ce qu'il ferist un home en le Sale de Westminster.*---Both the other cases are of striking in Westminter Hall, *sedentibus Curiis.* The authorities, therefore, cited by my Lord Coke, decide nothing as to the offence committed *elsewhere* than in Westminster Hall.

I therefore take a distinction between a striking in Westminster Hall, which is the King's palace, and in the presence of that Court in which he is supposed to administer justice in person, the Court *coram ipso Rege*, and the like offence committed in other places, and before other Courts, as Courts of Oyer and Terminer or Gaol-delivery. In this distinction I am supported by no mean authority; for STAUNFORD, in observing upon the above case in Fitz. Coro. says, "*Quære, si issint ser-*"*ra, s'il luy ferist forsqu' en le Palays de Westminster.* "Quære, if so shall be, if he strike him *except* in the "Palace of Westminster." S. P. C. 38.

Lord Coke speaks generally of Justices of Oyer and Terminer, and says that striking in the presence of such Justices is punishable with the loss of hand: and yet in the next page he cites Holbrooke's case, which was, in fact, (although he does not say so) a commission of *Oyer and Terminer*, as appears by the Record in the Crown Office.

TERM HIL. AN. 3. ED. III. ROT. 116.---*Johannes de Londham, Robertus de Insula, Thomas de Latem, et Will. Giffald, assignati fuissent per commissionem Domini Regis*

*Regis, in Suffolk, ad audiendum et terminandum omnes transgressiones in eodem Comitatu factas, &c.*; and there came Thomas de Holbrooke, who, having raised a noise and clamour in the Court, was ordered to be committed; and who, upon that, "*ipsi Johanni dixit quod ipse mentitus fuit, et ipsum cepit per Gulam, et jactabat ultra capita clericorum, &c. Et quia idem Thomas coram concilio cognovit, quod prædictum Justiciarium Domini Regis dementitus fuit, et manus violenter imposuit, &c. committitur prisonæ Turris London ibi custodiendum ad voluntatem Domini Regis.*---This was a commission of Oyer and Terminer, though not for the trial of treason and misprision of treason.

But there are precedents, in the Crown Office, of assaults and strikings, even in Westminster Hall, in the *presence of the Justices*, but where the sitting of the King's Court, *coram ipso Rege*, is not particularly mentioned, and where the punishment was arbitrary and not specific.

T. PASCH. 31 ED. III. ROT. 85.---*Cotina de Coureste cum lapidibus in Aula Westm.* IN PRÆSENCIA JUSTICIARORUM *insultavit Thomas de Shene*, and damages 20s.

T. TRIN. 19 ED. III. ROT. 77.---*Apud Westm. Thomas de Whiteshegh percussus in pectore cum quodam Bodekins*, IN PRÆSENCIA JUSTICIARORUM, *per Willielmum de Anlingham Coteler*---and a fine of 5 marks.

In the following cases, judgment to lose the hand was given.

T. TRIN. 1 ED. IV.---*Johannes Davy apud Westm. in magna Aula Placitorum Domini Regis juxta Barram Banci ipsius Regis*, CORAM IPSO REGE, *Curiis ejusdem Regis (videlicet) Curia ipsius Regis*, CORAM IPSO REGE, *Cancellariæ et Communi Banci apertis ac justiciariis Domini Regis in Curiis, &c. præsentibus, vi et armis, &c. in Ricardum Hayward insultum fecit, &c. et cum pugillo suo, &c.* PERCUSSIT, *&c.*---This is the case put in Dyer, 188.

T. HIL. 15 and 16 CAR. II.---*Willielmus Bockenham apud Westm. in magna Aula Placitorum in et super quendam Robertum Harlestone, &c. Curia Domini Regis Cancellariæ, Curia Domini Regis*, CORAM IPSO REGE, *et Curia Domini Regis de Banco apertis, &c. et Justiciariis in Curiis, &c. præsentibus, &c. vi et armis insultum fecit, &c. et super faciem, &c.* PERCUSSIT, &c.

In these cases the offences were committed in Westminster Hall; but in the following case, where the offence

fence was not committed in Westminster Hall, the punishment was discretionary.

APUD EBOR. T. MICH. 6 ED. III. ROT. 30. *Adam de Everingham de Rockeley attachiatus fuit*, &c. *p. ea quod Johannem de Rockeley venientem ad Curiam Domini Regis ad persequendum*, &c. *insultavit*, &c. *et manu sua*, &c. *percussit*.---He was found guilty; *et quia transgressio et contemptus prædicti perpretati fuerunt in præsencia Justiciarorum*, the judgment was, that he should be imprisoned during the King's pleasure.

Considering, therefore, the whole of these cases, and believing, as I do, that no precedent could have been produced to meet the present, I think I may conclude, that the Court of King's Bench would not have felt itself called upon to pronounce the specific judgment.

But there are other, as I think, fatal, objections to the MANNER in which the offence is charged.

First, the striking is not laid as an entire and substantive charge; and could not have supported a separate and distinct judgment from the other offences with which it is blended in the Information.

This objection is peculiarly applicable to the first and third counts.

In these counts there is a riot charged; and also that the Defendants did *unlawfully*, *riotously*, *routously*, *and tumultuously*, *in and upon*, &c. *make an assault*, &c.---Here I say that the riot is the substantive charge; and that the assault is only a part or aggravation of the riot.

Put this case, that the riot had not been laid "with "divers others," I submit that no judgment of any kind could have passed upon the Earl of Thanet and myself---not upon the riot, because two cannot make a riot; nor upon the assault and battery, for these are a part of the riot, and are so charged.---I reason thus upon the authority of my Lord Holt, in the King *v.* Heapes, Salk. 593, which is thus:

"Indictment, that the Defendants *riotose et routose et illicite assemblaverunt, et sic assemblati existentes riotose et routose insultum fecerunt in quendam J. Russel*, &c. Upon Not Guilty, the Jury found two Defendants guilty, and acquitted the rest; and it was moved in arrest of judgment, that two cannot make a riot, and therefore cannot be guilty of a riot; and that all are acquitted by this verdict,

dict. On the other side it was said, that the assault and battery is charged in the indictment as well as the riot; and two Defendants may, as they are found, be guilty of that."

Sed per HOLT, C. J. "A riot is a SPECIFIC OFFENCE, and the battery is not laid as a charge of itself, but as a PART OF THE RIOT; FOR THE RIOTOSE ET ROUTOSE RUNS THROUGH ALL, and is ascribed to the battery as well as to the assembly. The consequence is, that these Defendants being discharged of the riot, are discharged likewise of the battery, and no judgment can be given; and judgment was arrested."

So in our case, I argue, that, being convicted of a riot, "with divers others," and the battery being charged as a part of the riot, we could not have had a separate judgment for the battery; and that therefore no other judgment could have been given than the JUDGMENT FOR A RIOT ONLY.

In the second count, as there is no riot charged, this reasoning cannot apply to it; but upon this count, as I have already observed, there was no evidence given of a battery: and therefore the Court would not have proceeded to give judgment upon it, but would have ordered a *new trial* to be had, the objection not being good in *arrest of judgment*.

In the second count, as well as in the first, there is charged an attempt to RESCUE MR. O'CONNOR.

I come now to shew, that the Court could not have pronounced judgment upon *this part* of the charge; for that, under the circumstances stated in the Information, it does not appear that there could be such an offence as a rescue of Mr. O'Connor.

The Information sets forth, that Mr. O'Connor, being in the custody of the Sheriff of Kent, was tried by a Jury, and by them found NOT GUILTY of the premises charged upon him; and that, "before any order or direction had been made or given by the same Justices and Commissioners above-named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and before the said Arthur O'Connor was discharged from the custody of the said Sheriff," &c. the Defendants did, "with force and arms," &c. "attempt and endeavour to rescue the said Arthur O'Connor

nor

" nor from and out of the custody of the said Sheriff," &c.

Now what I submit is, that this offence is not sufficiently charged; and that it should have been averred, that *an order was given to* DETAIN, or that a warrant was served upon Mr. O'Connor, and that he was so detained or arrested, upon FRESH PROCESS.

The whole question is this---Has the Sheriff a right, and is he bound, in every case, to detain a prisoner in his custody, after such prisoner is acquitted, until the Judge before whom he has been tried shall have given an order for his discharge? or, are there not, independent of such order of the Judge, certain rules of law, and provisions by act of Parliament, whereby the Sheriff, upon the acquittal of a prisoner, is bound to proceed with respect to the discharge of such prisoner?

I do not speak of those cases in which such prisoner is arrested or detained *at his acquittal* upon *fresh process*, which is not the case here, so far as we can learn from the Information; and I need not say that such a material fact cannot be taken by inference or intendment.

In the first place, then, I find in my Lord Coke, 2 Inst. p. 53. that, " If a sheriff or gaoler detain a prisoner in " the gaol *after his acquittal*, unless it be for his fees, " this is false imprisonment."

Then by the act 14 Geo. III. c. 20. it is provided, that " Every prisoner who now is, or hereafter shall be " charged with felony or other crime, or as an accessary " thereto, before any court holding criminal jurisdiction " within that part of Great Britain called England and " Wales, against whom no bill of indictment shall be " found, or who on his or her trial shall be ACQUITTED, " or who shall be discharged by proclamation for want of " prosecution, shall be IMMEDIATELY set at large in " OPEN COURT."

But it may be said, perhaps, that this regards felony, and not treason; and that the words " other crime" cannot be taken to extend to a higher crime than felony.

Besides that taking up this narrow ground would be admitting my general proposition, there is this short answer to the objection:---The generic term " felony" comprehends treason; and although, in a statute enacting a penalty, it might not be so construed, yet, in one like this, which gives a remedy, it would. But it may further be objected, that we learn, both from the

the title and preamble of this act, that it was framed for a particular purpose; to give relief to prisoners who might be detained for their fees.---Be it so--- It is giving them relief in the only case in which they could want relief; in the only case in which the sheriff or gaoler could legally detain them after their acquittal; namely, for their fees. But is it necessary to argue, that in no statute, above all, in no remedial statute, can the title or the preamble, which may, and usually do explain the general scope and intent of an act of Parliament, be admitted to restrain the *express* provisions of its enacting clauses. My Lord Hale, in his History of the Common Law, observing upon the statute of Henry IV. against appeals in Parliament, says, "Though the petition," (which in the old statutes, it may be observed, was ever more extensive than any title or preamble can be,) "expresses only treason and felony, yet the act is *general* "against all appeals in Parliament; and many times the "purview of an act is larger than the preamble or the "petition."

So in this case, the act 14 Geo. III. is general with respect to all persons who, charged with felony or other crimes, shall upon their trial be *acquitted;* and it enacts that all such persons shall be "IMMEDIATELY set at "large in OPEN COURT."

Surely, then, if a prisoner be indicted for an attempt to escape after he is acquitted, or if another person be indicted for having assisted him in that attempt, it is at least incumbent upon those who indict to set forth the cause for which he was detained, and by reason of which he was not entitled to the benefit of this statute. It is necessary, that the Court may be enabled to ascertain that the indictors have not gone upon insufficient premises.

But the cause why he was detained, it may be said, does appear upon the Information, namely, that the Court had given no order for his discharge.

Is it then contended, that no prisoner shall have the benefit of this act unless the Judge chuse to give his order for that purpose; or, in other words, that the Judge can dispense with the act of Parliament? What mean these words, "Shall be immediately set at large in OPEN COURT?" Do they mean any thing, or nothing; or do they mean any thing, or nothing, just as the Judge pleases? How is a prisoner ever to have the advantage of being set at large in "open Court," if the gaoler can take him back

prison until he shall have had an opportunity of having it "certified to him that there are no other warrants against "him, either on the part of the public, or of some pri-"vate prosecutor."

What if the Judge neglect to give this order? The prisoner has already received the verdict of his country, but he is to be detained until he shall have received the verdict of the Judge too.---Is he to be kept in prison one---two---three---six months? How long does the power of imprisonment on the part of the Judge last? If I can put any case in which this might be false imprisonment, (and are there not many?) I put a case in which it would be no offence in the prisoner to attempt to escape, nor any in a stranger to attempt to rescue him.

It cannot be supposed, that I deny the power of the Judge, upon sufficient grounds, to have detained Mr. O'Connor; or the authority of an officer, upon a lawful warrant, to have arrested him the moment of his acquittal. But nothing of this appears on the Information. What should have been *averment*, may have come out in *evidence*; but that will not help the Record. For any thing that appears in the Information, Mr. O'Connor either was, or ought to have been *at large in open Court*, for he was *acquitted*. The custody of the Sheriff was at an end, a prisoner being "delivered by due course of "law," when the Jury have "well and truly tried and true "deliverance made between the King and the prisoner."

But I conceive further, that in this Information the terms of art are wanting, necessary to constitute the offence of striking in a Court of Justice.

The words used in describing it are, "beat, bruise, wound, and ill-treat," the form of a common battery. There is wanting the term "percussit," or "struck;" and it should also have been charged to have been done "maliciously." The part of the body on which the blow was given, and the particular hand or weapon with which it was given, I take it, are equally essential.

There are, I believe, in the Crown Office, only two indictments which will be found exactly to meet the present case. Those of Carye and Waller were, as I have already observed, for another offence.

The two to which I allude are,

In Davy's case, 1 Ed. IV.---The words there are,

*Vi*

*Vi et armis, viz. pugillo et baculo in præfatum Ricardum insultum fecit, ipse que Johannes Davy prædictum Ricardum cum* PUGILLO SUO MANUS SUÆ DEXTRÆ *super faciem suam* PERCUSSIT, *et cum quodam baculo quem idem Johannes Davy tunc tenuit in* MANU SUA DEXTRA *præfatum Ricardum* SUPER CAPUT SUUM *violenter et* MALITIOSE *similiter* PERCUSSIT, &c.

IN BOCKENHAM'S CASE, 15 AND 16 CAR. II. the words are, *Insultum fecit, et ipsum Robertum Harlestone adtunc et ibidem, vi et armis* SUPER FACIEM ET CAPUT SUUM, MALITIOSE *et violenter* CUM PUGNO SUO DEXTRO *adtunc et ibidem* PERCUSSIT, *ac ipsum Robertum adtunc et ibidem verberavit, vulneravit, et maletractavit, &c.*

These precedents, at such a distance of time, but agreeing so entirely, the one with the other, seem to be conclusive as to the form of an Indictment for this offence. In the necessity of the word "malitiose," we are further confirmed by the analogy of the statute of Hen. VIII. affixing the penalty of the loss of hand to a striking in the King's palace, attended with the loss of blood. The offence is there termed "MALICIOUS striking, by means whereof blood is shed."

There is this further to be observed, that in Bockenham's case (and it is most material indeed) the words "verberavit, vulneravit, et maletractavit," "beat, wound, and ill-treat," are, in fact, used, but not so as to dispense with the term of art "PERCUSSIT."

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BUT I shall now take up the subject in a very different point of view. I shall suppose that there is nothing in any objection which I have yet urged;---I shall admit, for the sake of argument, that the battery charged in the three first counts of the Information is so laid as to constitute that offence which is punishable with the loss of hand, &c.

I think I can shew, that, in *that case*, the Record was insufficient to support ANY JUDGMENT;

1*st*, Because offences which infer punishments of a different nature cannot be included in the same Information or Indictment:

2*dly*, Because, in the trial of an offence of which the punishment extends to the loss of limb, the King's Attorney General cannot proceed by Information *ex officio*.

As to the first point, it was formerly held in misdemeanours, that two offences could not in any case be joined in the same Indictment; and upon this principle was decided the case of the King *v.* Clendon, 2 Stra. 870, 2 Lord Raym. 1572, for an assault upon two persons, where judgment was arrested ;---so was the case of the King *v.* Roberts, in Carth. 226: And, per Holt, C. J. "A "single offence ought to be laid and ascertained, &c. "because each offence requires a separate and distinct "punishment, according to the quantity of the offence."

It is true, that in the King *v.* Benfield and Saunders, 2 Bur. 984, the case of the King *v.* Clendon was said not to be law: and it was held, that two libels on two persons might, under certain circumstances, be joined in the same Information: but this point was more fully discussed in a late case---that of the King *v.* Young and others. 3 T. R. 101; and seems to have been there settled on the soundest principles.

This was an Indictment for obtaining money under false pretences; and the transaction which gave rise to the false pretence was differently stated in the different counts, so as not to appear necessarily to be the same transaction. Among other points which were urged by the Counsel for the Defendants in arrest of judgment, was this---that two distinct offences could not be included in the same Indictment or Information; and the cases in Strange, Lord Raymond, and Carthew, were relied upon. On the other side, the case in Burrow was cited; and per Lord Kenyon, "The objection would be well-founded, IF THE "LEGAL JUDGMENT ON EACH COUNT WAS DIFFE-"RENT; it would be like a misjoinder in civil actions: "---But, in this case, the judgment on all the counts is "PRECISELY THE SAME; a misdemeanour is charged in "each." This, to make his Lordship's opinion consistent, must be understood of a misdemeanour on which the legal judgment is *not* different.

Now, what is the case upon this Information? In one count there is charged a riot without any aggravation, and which the Court might punish at their discretion with fine and imprisonment: in other counts there is charged (as we are to suppose) an offence, inducing the highest punishment which the law knows, short of death---an offence for which the party must lose his hand, suffer perpetual imprisonment, and which is followed by the forfeiture of goods and chattels, and the profit of lands during life; and in the pronouncing of which sentence the

Court

Court has no discretion. The question is, whether the *legal judgment* on these counts be different or the same? The answer will tell us whether or not they can be included in the same Information or Indictment.

I am, secondly, to shew, that,

In the trial of an offence of which the punishment extends to the loss of limb, the King's Attorney-General cannot proceed by Information *ex officio*.

And I have first to observe, that the law of England, in the scale of offences and of their punishments, has ever classed by themselves those which affect life or limb. We find, therefore, very early, that of such offences the King's Courts could alone take cognizance, and that judgment of life or limb could only be given in these Courts. Such offenders were to be imprisoned "in "prisona ipsius qui tales posset in Curia sua judicare, "sicut Dominus Rex qui potestatem habet judicandi DE "VITA ET MEMBRIS."---*Bracton de Corona.*

In our ancient statutes the same distinction is preserved. For instance, in that "DE FRANGENTIBUS PRISONAM," 1 ED. II. it is provided, "quod nullus qui prisonam "fregerit subeat judicium VITÆ VEL MEMBRORUM, nisi "causa pro qua captus et imprisonatus fuerit tale judi-"cium requirat," &c.; and therefore an Indictment for so breaking prison must set forth a commitment for such an offence as is punishable with the loss of life or limb: and in 5 Edw. III. we find, "That no man from henceforth "shall be attached by any accusation, nor forejudged of "LIFE OR LIMB, &c. against the form of the Great "Charter, or the Law of the Land."

In the trial, too, of offences which go to life or limb, there are many circumstances common to both, and which are not applicable to other criminal cases. Thus, "In criminal cases of *life or member*, the Jury cannot "give a privy verdict, but they must give it openly in "Court." 1 Inst. 227, *b*.---And there we also find, that "A Jury sworn and charged in case of *life or member*, "cannot be discharged by the Court, or *any other*, but "they ought to give a verdict." The consequence is, that the prisoner cannot be tried again for the same offence. This last maxim will be found very material in this discussion.

It is an admitted principle of law, that the King cannot be nonsuited; for he is ever supposed to be present in Court:

Court: and this applies to criminal as well as civil cases. But in the trial of misdemeanours by Information for the King, his Attorney-General may enter a *nolle prosequi*, which operates as a nonsuit. He may do it at any stage of the proceedings---even after verdict, and before judgment: he may do it at the trial, before evidence is called; or he may do it after evidence is called, and the *Jury charged*; and the Jury shall *not* proceed to a verdict. Then what becomes of the above principle, that a Jury sworn and charged in a case of life or member cannot be discharged, &c.?---Here is a case of limb, in which the Jury are sworn and charged, but do *not* proceed to a verdict---Why? Because the Attorney-General enters a *nolle prosequi*, by which he reserves the right to try the Defendant again.---Is it not an evident consequence, that the proceeding by Information does not apply to such cases?

It will not be said, that, in a case of life, the Attorney-General can proceed by Information. The question is, whether he can so proceed in a case of limb? I shall shew that they have both been *equally*, at all times, excepted from that species of process.

Whether Informations were first given by statute, or whether they were at common law, it is not necessary here to inquire. What I shall endeavour to shew is, that, neither by the provisions of the one, nor by the principles of the other, they could ever have been extended to an offence involving in its punishment the loss of limb.

In the first place, I think I hazard nothing in asserting, that there is not a SINGLE PRECEDENT to be found, by which it appears that such an offence was so tried. I know there are none in the books truly stated; for the case of Bockenham, which in Keble and Levinz is said to be by Information, is, in fact, by Indictment, as appears by the Record in the Crown-Office.

I believe the whole learning on the subject of Informations, or at least every thing which can be said *for* them, is to be found in 1 Shower 106, in an argument intended to have been made by Sir Bartholomew himself, in the case of the King *v.* Berchet and others, for a riot. It is one of the ablest, and certainly the most elaborate argument of that eminent lawyer. He seems to have had access to every Record: and he has produced precedents, of one kind and another, of Informations, for every offence in

the

the shape of misdemeanour, from *præmunire* down to the most trifling trespass; but none for this offence, nor for any offence punishable with the loss of limb.

It was argued, in that case, by Sir Francis Winnington for the Defendants, that by the statute 11 Hen. VII. c. 3, Informations were given; and that the statute being repealed by 1 Hen. VIII. c. 6, Informations were abolished with it. But it seems to have been held, that the statute of Hen. VII. was only meant to extend, to Justices of Assize and Justices of Peace in the counties, the same power of trying by Information which was before by common law inherent in the Court of King's Bench. The words of the act Hen. VII. may therefore explain to us what was the nature of this power, at common law, of trying by Information in the Court of King's Bench.

It cannot be supposed at least, that in that statute, which was made for the purpose of oppression and extortion, any offence would have been omitted, which was before legally the object of that species of prosecution in any Court.

In the modern editions of the statutes, according to a very inconvenient practice, an abstract only is given of this act, being repealed. In Ruffhead's Statutes, the abstract is in these words: "The Justices, &c. upon In-" formation for the King, shall have authority to hear and " determine all offences and contempts (*saving treason, " murder, and felony*) committed," &c.---The inaccuracy of this abstract in a very material point, and which makes indeed the whole of this case, will appear by a reference to Rastall's edition of the Statutes, where the act is given at length.

It first recites, that many statutes had been made for punishing riots, unlawful assemblies, and a variety of other offences enumerated in the act: And, " for so much " that, before this time, the said offences, &c. might, " nor as yet may be conveniently punished by the due " order of the law, except it were first found and pre-" sented by the verdict of twelve men thereto duly " sworn," &c. it enacts, that the Justices of Assize and Justices of Peace, "upon information for the King before " them to be made, have full power and authority to " hear and determine all offences and contempts, &c.; " PROVIDED ALWAYS, that any such information ex-" tend *not* to treason, murther, or felonies, *nor to any other*

" *other offence, wherefore any person shall lose life or mem-*
" *ber.*" In my Lord Coke, in a marginal note upon the part of the statute, it is said, " But it extended to " *præmunire* and misprision of treason." 4 Inst. 42.

We find, then, that even under this law of oppression and extortion, for the advising and executing of which, Empsom and Dudley suffered, this offence could not have been tried.

Let us next see, whether it could have been tried in the STAR-CHAMBER; that Court which assumed such an extensive jurisdiction in the trial of offences by Information; and so exercised that jurisdiction as no Court will ever dare again attempt the like in England?

The Court of Star-Chamber took cognizance of " oppression and other exorbitant offences of great men, " whom inferior Judges and Jurors (though they should " not) would, in respect of their greatness, be afraid to " offend; bribery, extortion, maintenance, champerty, " imbracery, forgery, perjury, dispersion of false and " dangerous rumours, news and scandalous libelling, " false and partial misdemeanours of Sheriffs and Bailiffs " of liberties, frauds, deceits, *great and horrible riots*, " routs and unlawful assemblies, single combats, chal- " lenges, duels, and OTHER *heinous and extraordinary* " *offences and misdemeanours.*" 4 Inst. 63.

Let any one attempt to make out a more formidable catalogue of offences which the Court of King's Bench has or ever had the power to try, or the Attorney-General to prosecute, by Information *ex officio*.---Yet we find, that, enormous as was this jurisdiction of the Star-Chamber, it had these limits: " It extendeth not," says my Lord Coke, 4 Inst. 64, " to any offence that concerns " the life of man, or OBTRUNCATION OF MEMBER, the " ears only excepted, and those only rarely, and in " most heinous and detestable offences."

Upon the abolition of the Court of Star-Chamber, it is said, that the common-law authority of the King's Bench, of trying by Information, which authority had been almost extinct, " was again revived in practice;" 4 Com. 310; and that into the last Court " reverted all that was " good and salutary of the jurisdiction of the Star-Cham- " ber," 4 Com. 266: but it has never been pretended that it succeeded to a *higher* jurisdiction in the trial of offences *by this process of Information*. " This Court," says

says my Lord Holt, " hath all the *lawful* power which " the Star-Chamber had," Com. 142: And again, " The " Court of Star-Chamber was taken away because the " crimes were punishable here," 5 Mod. 464. What crimes?---crimes of which the punishment does *not* extend to life or *limb*, which I maintain cannot at this day, and never could at any time, be tried in England, " except they were first found and presented by the verdict " of twelve men thereto duly sworn."

I conclude, then, that the Court of King's Bench could not proceed to judgment against any one convicted of such an offence, upon an Information filed *ex officio* by the King's Attorney-General. *

I have now done. It was incumbent upon me, as far as in me lay, to satisfy the Public, or, rather, that small portion of the Public whom any thing which regards me can interest, that I swore nothing rashly, when, under that sacred solemnity, I declared, that I was innocent of the whole and every part of the charge of which I had been convicted. I leave my case, then, in the hands of those for whom these observations were intended, particularly of those whose good opinion must ever be dear to me,---the Members of that Profession to which the humble labours of my life are to be directed. On the questions of Law, more might have been said; but I fear that I have been tedious enough on a subject which cannot interest the Public, and which, even to the Profession, is perhaps more an object of curiosity and speculation, than of use. It is not likely that the case will ever again occur, unless when it shall happen, that the Officer of the Law who prosecutes, the learned Counsel who defend, and the Jury of the Country who try, shall know as little as the Person who is tried, what the offence is with which he stands charged.

I shall only farther observe, that if the offence laid in the Information under which I was tried, be really of that most serious kind, which some have supposed, I cannot do justice to the Noble and Learned Judge who presided at the trial, without believing, that, upon that occasion, even his knowledge, accurate and extensive as it is, must have been at fault. Had it been otherwise, his Lordship

* To do the late Attorney-General justice, he has not claimed the power of filing any such Information.

Lordship would have been induced, in fairness to the Defendants as well as to the Jury, to have stated, what were the different punishments annexed to the different counts; and he would have told the Jury, that if they found a verdict of Guilty upon some of the counts of the Information, they would subject the Defendants to perpetual imprisonment, their estates to forfeiture, and their bodies to mutilation!---a judgment, at which the humanity of a British Jury would have shuddered.--- Little, indeed, did this Jury imagine that their verdict might revive the obsolete provisions of this savage law.

It must have been pleasing, therefore, to his Lordship, and to the other Judges who assisted him at the trial, that in such a case, and under such circumstances, it was not reserved for *them* to drag from its tomb the remains of this forgotten judgment.

No case has ever occurred, which tends so strongly to inculcate the necessity suggested long since by the wisest of men,* of a revision of our penal code, that a number of barbarous and bloody laws may be blotted from its pages;---laws which are not dead, but sleep---which may be revived from day to day, as occasion shall require, and which are ever ready to fall as a "shower of snares" upon the people.

I cannot conclude, without touching upon one topic connected with these proceedings, and upon which my feelings must be cold indeed, if they allowed me to be wholly silent.---I allude to the conduct of my Advocate and Friend, Mr. ERSKINE. Of his defence, let those who heard it judge. It is sufficient to say, and more cannot be said, that it equalled any of those former exertions by which he has for ever shut out all higher praise. With respect to what is personal to myself, the marks of affectionate interest which he has shown towards me through the whole of this affair, deep as they have impressed themselves upon my mind, have caused, there, no new sensations: They are such as I have often before had reason to experience---*Studium suum, curaque de salute mea nulla me nova voluptate affecit.* I have long enjoyed a proportion, perhaps beyond my merits, of his countenance and friendship. It has ever been my study to seek the approbation of a man, whom, for the mild and

* Lord Bacon.

and amiable virtues of his private character, I esteem and love,---whom, for the noble and manly features which mark his public conduct, I admire and venerate---of a man, whom the force of genius and eloquence has raised in his Profession to that height, where he excites no envy (for he can have no enemy when he has no rival); and whose whole life---a life not untried on the slippery stage of Politics, nor unexposed to all the temptations and allurements of a corrupt ambition---has been a life of honour, integrity, and independence. His has not been "a fugitive and cloistered virtue, unexercised "and unbreathed, that never sallies out to meet her adver-"sary, but slinks out of the race where the immortal gar-"land is to be run for, not without dust and heat."---During a period of twenty years, he has fought every arduous contest, in which the rights of his countrymen, and the cause of general liberty, have been involved.---So many and so splendid have been the triumphs of his eloquence, that they have left to him no farther honours to attain:

——————Nil jam, Theodore, relictum,
Quo virtus animo crescat, vel splendor honore.
Culmen utrumque tenes.——————

FINIS.

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